

2005 - 2006 Annual Report

*Environmental Officials Board*



I am pleased to submit the Environmental Appeals Board's Annual Report for the period of April 1, 2005 to March 31, 2006.

This year has been a particularly stimulating time for me because I was appointed to be Chair of the Environmental Appeals Board. I was eager to take on this responsibility, and I know that I have large shoes to fill with the departure of Dr. William A. Tilleman and Dr. Frederick Fisher, the Board's previous Chairs. These two exemplary leaders established the credibility and integrity of the Board and emphasized the importance of the Board's role in considering the interests of all Albertans in the appeal process. I am honored to follow in their footsteps. I welcome this opportunity to work with the Board's Vice Chair, Mr. Ron Peiluck, the Board members, and the Board staff who I know are deeply committed in the work they do for the Board.

I am also happy to announce that in July 2005, Cabinet appointed Mr. Alex MacWilliam and Mr. George Gaschler as the Board's newest Board members. With 12 years of experience in environmental and administrative law, and having appeared before numerous administrative tribunals and all levels of Court in Alberta, Mr. MacWilliam brings experience dealing with issues such as environmental contamination, intensive livestock operations, and Brownfield developments. Mr. Gaschler has an extensive agricultural, municipal, and water rights law background. Unfortunately, due to unexpected work related conflicts, Mr. Gaschler had to resign from the Board in February 2006. We appreciate the contributions made by Mr. Gaschler during his time with us and wish him the very best in his future pursuits.

The number of appeals processed by the Board remained high in the 2005-06 fiscal year. Seventy-three appeals were filed, bringing the total number of appeals filed since the creation of the Board to 1,362.

The Board continues to use mediation as an effective way to resolve many of its appeals. In 2005-06, the Board held 22 mediations. Of the 22, 17 were successfully resolved, 2 were unsuccessful, and 3 are ongoing.

Board members and staff participated in many presentations and information sessions over this fiscal year, speaking about different aspects of the Board and its processes and assisting other departments in alternative dispute resolution training.

I want to thank the Board members and staff who helped to make 2005-06 a success. Your hard work and commitment was instrumental in making this year successful. I look forward to the year ahead and the new challenges and opportunities that await us in 2006-2007.

## INTRODUCTION

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Established on September 1, 1993, by the proclamation of the *Environmental Protection and Enhancement Act*, ("EPEA") the Environmental Appeals Board (the "EAB" or the "Board") provides Albertans and industry with a mechanism to appeal certain decisions made by Alberta Environment. The scope of the Board's mandate expanded with the implementation of the *Government Organization Act* in 1995 and again in 1999 with the *Water Act*. This has significantly increased the Board's workload and function. The Board is committed to the impartial and efficient resolution of all matters before it and is committed to ensuring the appeal process is fair, thorough, timely, and cost-effective.

## VISION STATEMENT

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Promote a high quality of life in Alberta through the timely and thorough review of environmental decisions.

Albertans value their environment for the ecological, economic, and social benefits it provides. They expect their water to be safe, their air to be clean, their land to be productive, the quality of their environment to be sustainable and careful decisions to be made about the protection and management of the environment for generations to come. Albertans expect to be treated fairly and have matters involving their applications or appeals heard in a timely manner. The Board is committed to ensuring businesses and citizens have the opportunity to provide advice respecting environmental decisions and recognizes the shared responsibility of all Albertans to protect the environment.

## MISSION STATEMENT

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The Environmental Appeals Board will advance the protection, enhancement, and wise use of Alberta's environment by providing fair, impartial, and efficient resolution of all matters before it.

## BOARD'S STRUCTURE AND ORGANIZATION

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The Board holds a unique position in relation to the Department of Environment and the Ministry of Environment. The Board is under the umbrella of the Ministry and reviews and hears appeals regarding decisions made by Directors (statutory decision-makers) within the Department of Environment. Being an adjudicative body, the Board operates at arms-length from the Department to maintain the necessary degree of independence and impartiality. However, for budgetary reasons and for the purposes of providing the Minister with its decisions and reports once completed, the Board remains aligned with the operations and goals of the Ministry of Environment.

The Board consists of two distinct, yet interconnected entities: Board members and Board staff. The Provincial Cabinet appoints Board members, while the Government of Alberta, under the direction of the Chair, employs Board staff. Collectively, Board members have a variety of expertise and knowledge in environmental matters. Their decisions on matters under appeal are based on impartial, unbiased, and independent judgment. Board staff, employed by the public service, embrace the fiscal, environmental, and human resource goals of the government and, at the same time, remain focused on supporting the objectives and goals of the Board and its operations. Further, Board staff is dedicated to the operating principles of the Board and its mission.

Board members as of March 31, 2006:

DR. STEVE E. HRUDEY (CHAIR), EDMONTON;

MR. RON V. PEILUCK (VICE CHAIR), BRAGG CREEK;

DR. M. ANNE NAETH, EDMONTON;

MR. AL SCHULZ, SHERWOOD PARK;

DR. ALAN J. KENNEDY, COCHRANE;

MR. DALLAS K. MILLER, MEDICINE HAT;

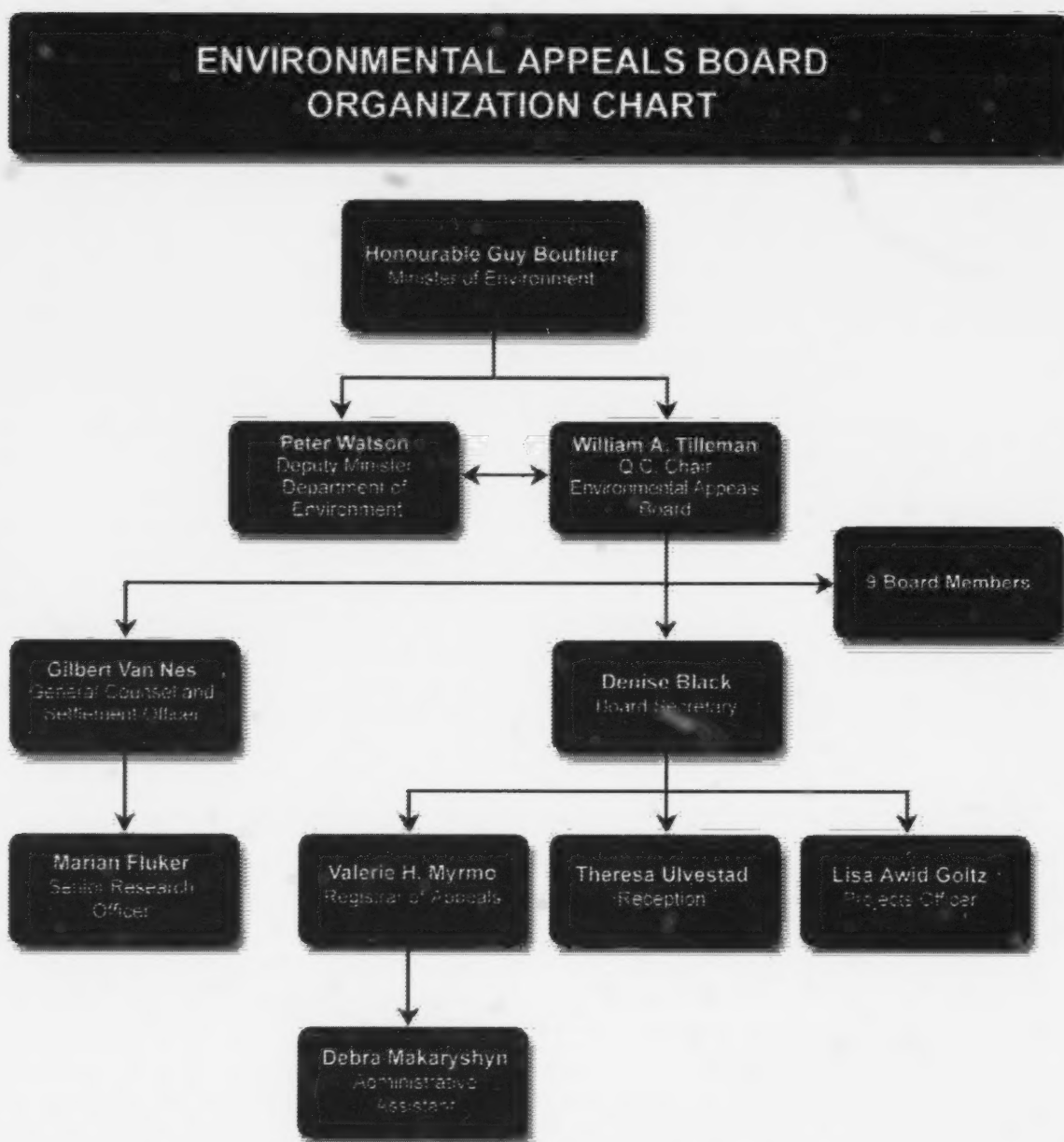
DR. HARRIE VREDENBURG, CALGARY;

MR. JIM BARLISHEN, LUNDBRECK;

MS. MARILYN KANSKY, EDMONTON; AND

MR. ALEX G. MACWILLIAM, CALGARY.





In conducting its business, the Environmental Appeals Board is guided by its belief in:

**Ecosystem Sustainability**

Consistent with the legislation, the Board believes that a healthy environment is essential to the integrity of ecosystems and human health and to the well being of Albertans.

**Sustainable Development**

The Board hears and processes appeals in a fair and effective manner striving to ensure the wise use of Alberta's renewable resources with the goal that future generations may also benefit from them.

**Shared Responsibility**

The Board shares the responsibility of managing Alberta's natural resources by providing Albertans the opportunity to have a voice through the Board's appeal process.

**Public Involvement**

The Board ensures information on its mandate and rules and regulations is freely accessible. The Board provides Albertans with the opportunity to appeal and become active participants in the process through hearings or mediations.

**Informed Decision-Making**

The Board hears and processes appeals on the basis of relevant scientific, technological, and environmental information to ensure fully informed decisions are made.

**Mediation as the Preferred Way to Resolve Matters**

Board mediations promote open and collaborative discussions between participants and encourage individuals to come up with their own solutions. Mediation can help increase communication; develop a better understanding of the participants' concerns, and offer win-win solutions.

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<sup>1</sup> The Board's core values were reviewed in April 2005. See the Board's 2005-2008 Business Plan.

**Public Service**

The Board is dedicated to providing excellent service to Albertans in all regions of the province.

**Healthy and Supportive Work Environment**

The Board values its staff and Board members and strives to provide a working environment where open, honest, and respectful communication is encouraged. The Board also supports its staff in maintaining a healthy, active lifestyle.

**CORE BUSINESS**

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The Board's core business is to hear appeals from affected parties on decisions regarding environmental approvals, water licenses, enforcement actions, reclamation certificates, and other matters. The goals of the Board are linked to the core business and goals of the Ministry of Environment and the core businesses of the Alberta government, which are people, prosperity, and preservation.

Social (people), economic (prosperity), and environmental (preservation) effects of resource development are reviewed through the Board's appeal process to ensure that Alberta's natural resources are sustained, the high quality of Alberta's environment is maintained, and resource development continues to prosper. The Board is committed to contributing to the sustainable development of Alberta's natural resources for the benefit of Albertans today and in the future.

The Board continues to work to find ways of operating more efficiently and effectively while maintaining quality services.

During the past year the Board has been faced with new issues and recurring issues. In the early part of the 2004-05 fiscal year, the Board released its decision regarding the use of potable water for deep well injection. At the time the Director made his decision regarding the licence, there was no policy in place to deal with the issue. The Director used the Ground Water Policy as the basis for preparing the licence, realizing its limitations since the existing policy is specific to groundwater. The Board, in its recommendations that were accepted by the Minister, recommended the Government develop a policy that deals with the use of fresh water for oilfield injection and to require proponents conduct an analysis of alternative sources of water. In its recommendations, the Board reduced the amount of potable water allowed to be used under the licence taking into consideration the amount of water available to the proponent from alternate sources.

In August 2004, the Government Advisory Committee issued its Water Use Practice and Policy report, and it recommended an approach to reduce underground injection of non-saline water. As of January 1, 2006, Alberta Environment has a policy specifically dealing with using potable water in deep well injection, the Water Conservation and Allocation Policy for Oilfield Injection. The ultimate goal of the policy is to reduce or eliminate allocation of non-saline water for oilfield injection while respecting the rights of current licence holders. The Board's decision was in line with the policy eventually developed. The Water Conservation and Allocation Policy for Oilfield Injection will provide guidance for proponents, citizens, and Alberta Environment.

The complexity of issues and awareness of the public has continually increased as evidenced by the Board conducting mediations with more than 15 appellants involved. Although it was a challenge, the mediations were successful as a result of the willingness of the participants to reach a resolution and the skill of the mediators to ensure the issues were raised and discussed to the satisfaction of all involved.

This year saw interesting arguments presented to support the appeals. One appellant argued an economic interest would be affected by the issuance of an approval. The Board has granted an appellant standing when their livelihood or a portion of their livelihood would be adversely affected by the proposed project. In the case before the Board this year, the appellant argued that, as a result of the competition coming into the area, its income would be reduced, and as a result of a lower income, it would not be able to maintain the higher environmental standard it was now achieving. It was an interesting argument that may arise again in different circumstances.

The Board received appeals that resulted from the appellants' concerns regarding the wording of the terms and conditions in the approvals. One of the appeals was resolved through mediation and another went to a hearing. In both situations what resulted were approvals that were varied to ensure clarity in the terms and conditions. This benefited the approval holders, the citizens of this province, and Alberta Environment. These appeals demonstrated the effectiveness of providing opportunities for citizens to provide advice on the decisions affecting the environment and the shared responsibility of all Alberta citizens to ensure the protection, enhancement, and wise use of the environment through individual actions.

The types and numbers of appeals the Board receives varies and is often dependent on external variables. For example, this year the Board received appeals as a result of the floods that occurred in June 2005 in southern Alberta. Issuing approvals to allow construction of works to minimize the potential for future flooding resulted in appeals being filed by those who are affected by the works themselves.

Water drainage has again become an issue before the Board. In some of the cases before the Board landowners have altered the flow of water on their properties by building works or trenches, often without prior approval, resulting in adverse affects to neighboring properties. In some instances the municipal district has become involved in the appeals as an intervenor. Most of these appeals have been resolved in mediation, often as a result of the cooperation of the municipal district.

The Board continues to receive a number of appeals as a result of the change in Alberta Environment's policy regarding the issuance of reclamation certificates without an on-site inquiry. Landowners appealed if a reclamation certificate was issued and companies appealed when reclamation certificates were denied. All of the appeals were successfully mediated, often with the appellant having a better understanding of what is expected and required by Alberta Environment. However, based on the concerns expressed by the participants, the Board believes the number of reclamation certificate appeals will remain high over the next few years.

#### **BALANCING PURPOSES AND INTERESTS**

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The role of the Board is to make decisions based on the facts and circumstances presented while keeping in mind the purposes of the *Environmental Protection and Enhancement Act* and the *Water Act*. Section 2 of these Acts lists the purposes of the legislation. No one factor is more important than the others, but the Acts recognize the key role all Alberta citizens have in ensuring the protection, enhancement, and wise use of the environment, including the conservation and wise use of water



resources. As part of this role, Albertans have the right to file a Statement of Concern with Alberta Environment and, if they are directly affected by the proposed project, they can file an appeal with the Board.

Those who appear before the Board have varying interests and usually include an appellant who opposes the issuance of the approval or licence, the proponent of the project who wants the approval but may not be entirely satisfied with the terms and the conditions, and the Director, who appears before the Board to explain the process and the basis on which he or she made the decision. Each party has their own position which usually involves conflicting opinions of the perceived harm to the environment. The Board listens to all of the arguments and data presented by the parties, and based on the information presented, the Board must make a decision. The Board essentially balances the interests, concerns, information, and data to come to a decision or to prepare recommendations for the Minister, keeping in mind the purposes of the acts and the importance of protecting the environment.

The sections recognizing the need for economic growth and prosperity have come under scrutiny by the environmental community when presented before the Board. Appellants often argue that you cannot preserve the environment and still have economic growth. The Board is required to balance the interests of all parties involved in the appeal as well as all Albertans and the environment. If the Board sees the need, it has recommended approvals and licenses be varied by requiring proponents to use best available technology or to research alternatives. Opponents to projects often only argue before the Board that they want the approval or licence cancelled. All parties to an appeal should consider alternatives and ways to minimize the effects of the proposed project on the environment for present and future generations.

The principle of balancing interests is also evident in the Board's mediation process. The major difference is that in mediation, the participants balance their interests with those of the other participants to reach a mutually agreeable solution rather than a panel of Board members deciding the issues. The mediator is a Board member who will not be involved in or communicate with any Board member who sits on a panel at a hearing of the appeal if the mediation is not successful. The mediator oversees the process to ensure the resolution complies with the purposes of the relevant legislation.

## SUMMARY OF RESULTS OF THE BOARD'S BUSINESS

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In 2005 – 06, the Alberta Environmental Appeals Board achieved significant results in all five strategic goals outlined in the 2005 – 08 Business Plan. The goals focused on: Substance; Process; Community; People; and Government. The results outlined in the following strategic priorities assisted the Board in achieving its goals over the past fiscal year.

### **Goal #1:**

**SUBSTANCE:** Treat all individuals that contact the board with fairness and respect. Decide matters with impartiality, integrity, and in accordance with principles of natural justice.

**Strategy A:** The Board will promote fairness in its mediations.

#### **Performance Measure**

1.0 Provide participants with information on mediation prior to attending mediations before the Board.

**Target:** 100% of participants provided with information before mediations.

**Target Met** Yes

#### **Results**

From April 1, 2005 to March 31, 2006, the Board received 73 Notices of Appeal. All participants involved in the Board's appeal process were provided with information on the Board's mediation program. The Board's Rules of Practice outline general and procedural information with respect to mediation. Participants were also forwarded a brochure entitled "Environmental Appeals Board Mediation/Settlement Conference Information Sheet – Mediation – What is it? Why use it?".

The Board held 22 mediations in 2005/06 and all participants who chose to participate in mediation were sent additional mediation information which included the Participants' Agreement to Mediate. The agreement implies a good faith commitment on behalf of the participants to the mediation process including confidentiality, the role of the mediator, communication, and ground rules.

In addition to written information, Board staff provides information about mediation to participants via telephone discussions. The Board's Registrar of Appeals plays an integral role in building rapport, clarifying information, and explaining the mediation process to the participants by outlining what to expect during mediation. Board staff have made themselves available after work hours to assist participants in this manner.

In 2005-06, the Board also updated its website to include a section specifically devoted to providing Albertans information on mediation. This site includes information about mediation, a frequently asked questions section, pictures of the Board's mediation facility located in Edmonton, and helpful links to other relevant websites on mediation. The Board also posted a variety of mediation

publications in relation to administrative tribunals. All publications are available for viewing in the Board's office in Edmonton.

#### **Performance Measure**

1.1 Provide trained mediators as facilitators.

**Target:** Board's General Counsel and Settlement Officer will certify training of all new Board Members for mediation.

**Target Met** Yes

#### **Results**

Board members are experienced in mediation and attend conflict resolution courses offered through the Legal Education Society of Alberta and the Alberta Arbitration and Mediation Society. Courses taken over the 2005/06 fiscal year included Mediation and Negotiation Theory and Skills and Mediation of Civil Disputes.

In February 2006, the Board hosted an in-house mediation training session for Board members and staff. The mediation training provided an opportunity to share knowledge and discuss issues with respect to mediation such as ethics, confidentiality, trust, emotion, and conflict of interests. The training also included a discussion on changes to the Board's current mediation documents including the Participants' Agreement to Mediate and the Mediation Survey.

In order to facilitate continuous learning and training, the Board expanded its library to include a number of new mediation resources such as reference books and videos. In addition to reading literature, new Board members are encouraged to observe mediations carried out by experienced Board members. Witnessing mediation "first hand" is a powerful learning tool for new Board members to become familiar with the Board's approach to mediation.

The Board has co-partnered with the Consensus Building Institute to create a how-to-manual on mediation for Board member training and reference. The manual, which is currently in draft form, outlines the Board's mediation process and provides detailed information on alternative dispute resolution. The Board is in the process of reviewing the draft and will provide it to members for feedback.

The Board's General Counsel and Settlement Officer, who holds a certificate in Conflict Management through the Alberta Arbitration and Mediation Society, attends with new Board members on their initial mediations. Staff with experience in conflict resolution conduct in-depth pre-mediation work and assist Board members as required in carrying out mediations.

#### **Performance Measure**

1.2 Conduct satisfaction surveys at the conclusion of each mediation.

**Target:** 100% of participants will be sent a survey after mediations.

**Target Met No**

**Results**

The Board distributes a satisfaction survey to each participant who takes part in mediation. From April 1, 2005 to March 31, 2006, the Board sent out 97 mediation surveys and received 52 responses. In one case, the Board decided not to send out a mediation survey because the mediation took place in 2003 and the file was closed on October 5, 2005. Since the Board's procedure is to distribute mediation surveys upon closing its file, and given that two years had elapsed, the Board decided to withhold sending the survey.

Surveys assess the level of satisfaction pertaining to the Board's mediation program and are kept anonymous. Constructive participant feedback helps the Board identify and implement specific changes to its mediation program. Feedback is also used for in-house research, analysis, and training purposes.

A brief summary of the 2005-06 mediation survey responses indicates that of the 51 responses, 88 percent of the participants reached an agreement in mediation. Compared to a formal process, 80 percent advised that mediation took less time and 90 percent advised that it cost less than a board hearing. When the participants were asked if they would participate in mediation again, 86 percent advised they would, including 9 percent who responded with "indifferent." Overall, the majority of respondents advised that mediation encouraged them to consider various options for resolving their dispute, they felt better able to talk to and work with the other participants, and the process was efficient and cost-effective.

**Strategy B: The Board will provide sound written decisions.**

**Performance Measure**

1.3 Ensure correctness of Board decisions by monitoring judicial reviews, legal decisions, or other statutory changes.

**Target: Yes/No**

**Target Met Yes**

**Results**

From April 1, 2005 to March 31, 2006, the Board issued 17 Decisions and Report and Recommendations and 22 Discontinuances of Proceedings. During this fiscal year only one judicial review was brought before the Courts. The Board pays particular attention to judicial reviews as it is the power of the Courts of Alberta to review the Board's decisions for constitutionality and for the violation of basic principles of natural justice.

The judicial review was with respect to the Board's decision relating to Sarg Oils Ltd. and Sergius Mankow with respect to the issuance of 16 Environmental Protection Orders ("EPOs") by Alberta Environment in 1994. The EPOs required Sarg Oils and Sergius Mankow to take remedial action with respect to 16 abandoned well sites near Camrose. Sarg Oils and Sergius Mankow submitted 16 Notices of Appeal to the Board in 1996. The Board issued a Decision indicating that the Director did not err in issuing the EPOs. The Board's Decision underwent a judicial review in the Court of Queen's Bench with a judgement stating that the Board must rehear the appeal. In November 1996, the Board held a hearing and issued a Report and Recommendations confirming that Alberta Environment issued

the EPOs correctly; however, the board directed Alberta Environment to immediately examine the criteria used when deciding what parties are to be recipients of EPOs and that the criteria should be made publicly available. The Minister agreed with the Board's recommendations and the Board, with Alberta Environment, underwent a second judicial review. The second judicial review granted the application of Sarg Oils and Sergius Mankow, ordering the Board's 1996 recommendations and the Minister's order be quashed and set aside, that the matter be referred back to the Board for a new hearing, and that Sarg Oils and Sergius Mankow be awarded costs. The Attorney General and Alberta Environment filed an Appeal to the Court of Appeal on October 7, 2005. The issues in the Appeal were the proper role and scope of the Board and the proper application of the standard of review of the Board's decision. The Board is holding the Sarg Oils appeal in abeyance pending the Court of Appeal decision.

The Board also received notice from the Court of Appeal of Alberta with respect to a Notice of Abandonment and Notice of Discontinuance of Appeal without costs with respect to past Board decisions. The Notice of Abandonment was filed on behalf of McColl-Frontenac Inc. from the Judgement of the Honourable Justice Marceau in the Court of Queen's Bench, rendered April 4, 2003. The Notice of Discontinuance was filed on behalf of Imperial Oil Limited and Devon Estates Limited pursuant to an agreement reached between the participants. The two notices indicate that the participants no longer wished to pursue their judicial reviews against the Board and withdrew their appeals.

In addition to reviewing judicial review decisions, the Board also keeps informed of statutory changes to legislation that affect the Board. During this fiscal year, the Board consolidated all new Codes of Practice for the *Environmental Protection and Enhancement Act* and *Water Act*, and kept abreast of changes made to the Activities Designation Regulation, Administrative Penalty Regulation, Conservation and Reclamation Regulation, and Substance Release Regulation. Keeping informed of these changes allows the Board to prepare decisions that are based on relevant legal as well as scientific, technological, and environmental information.

#### **Performance Measure**

##### **1.4 Stay updated on relevant law.**

**Target: Yes/No**

**Target Met Yes**

#### **Results**

The Board stays updated on current topics and legal issues through reporting services and newspaper clippings related to regulatory matters. The Board also follows Supreme Court of Canada rulings through current newspaper clippings and internet notice services.

Staying current on important legal issues assists the Board in writing thorough decisions that take current issues into consideration. The Board keeps updated on relevant law by subscribing to and reviewing national and international environmental and administrative publications such as the *Administrative Law Reports*, *Canadian Environmental Law Reports*, *Journal of Environmental Law and Practice*, the *Canadian Native Law Reporter*, and the *Stanford Environmental Law Journal*. Pertinent environmental matters are brought to light through reviewing publications such as *Enviroline*, *Environmental Dimensions*, and the Environmental Law Centre's *News Brief* which are internally circulated to Board staff.



The Board's Senior Research Officer attended the First Annual National Environmental, Energy and Resources Law Summit. Topics included emerging energy and resource developments and discussion on First Nations issues and the duty to consult.

The Board co-hosted the 17<sup>th</sup> annual Environmental Lawyers in Government Conference entitled "Leading the Way: Innovations in Environmental Law." Topics addressed at the conference related to regulatory approaches to drinking water, commercial and legal issues associated with climate change, in-depth discussion on prosecutions and enforcement, administrative and civil law, legislative drafting, and policy development initiatives.

The Board's Chair is a member of the Council of Canadian Administrative Tribunals ("CCAT"). The key objectives of CCAT are to promote access to administrative justice and address issues with respect to legislative and policy reforms and other issues that impact administrative justice. CCAT also provides information on the latest changes in administrative law and legislation.

The Board's General Counsel and Settlement Officer and Associate Counsel are members of the Canadian Bar Association and the Alberta Bar Association.

#### **Performance Measure**

1.5 Ensure Board members receive decisions and reports for review.

**Target:** Provide information to Board members within 3 working days.

**Target Met** Yes

#### **Results**

In order to keep Board members updated, Board decisions are distributed immediately upon being issued. This ensures Board members are kept up-to-date on all issues before the Board. With the exception of one Board member who receives decisions by fax, all Board members receive decisions via email distribution. In addition to receiving decisions, Board members are also provided with summaries of all Board decisions to date through the *Environmental Appeals Board Practitioner's Manuals* which are published on a quarterly basis by the Legal Education Society of Alberta. Board members and the public can view all decisions and summaries on the Board's website at [www.eab.gov.ab.ca](http://www.eab.gov.ab.ca).

#### **Performance Measure**

1.6 Ensure Board members receive updated legislation relevant to the Board.

**Target:** Provide information to the Board within 2 weeks of legislation becoming publicly available.

**Target Met** Yes

#### **Results**

Board members are provided with pertinent acts, regulations and various legislation-related materials as soon as it becomes available through the Queen's Printer of Alberta.

#### **Performance Measure**

1.7 All decisions, excluding Discontinuances of Proceedings (DOPs), are reviewed by legal counsel for legal accuracy.

**Target:** 100% of decisions, excluding DOPs, reviewed.

**Target Met** Yes

**Results**

From April 1, 2005 to March 31, 2006, the Board issued 17 Decisions and Report and Recommendations and 22 Discontinuances of Proceedings. All substantive decisions made by the Board were reviewed, from a legal perspective, by the Board's General Council and Settlement Officer.

**Performance Measure**

1.8 Encourage the use of plain language in its decisions.

**Target:** Yes/No

**Target Met** Yes

**Results**

As an administrative tribunal, the Board has a duty to provide opportunities to explain and advise the public and those who come before the Board about the Board's processes in a clear and understandable manner. In order to accomplish this to a greater extent, in 2005-06, the Board reviewed and incorporated recommendations from the Canadian Council of Administrative Tribunals' publication entitled *Literacy and Access to Administrative Justice in Canada: A Guide for the Promotion of Plain Language* and has incorporated plain language usage in its written documents including its decisions, general correspondence, and website.

The Board uses plain language in its decisions in order to help readers understand complex legal or technical issues before the Board. For example, in the Board's decision on CCS Inc. (04-090-R), which deals with oilfield injection, the Board uses footnotes to explain terms such as "produced sand" and "landfill standards." In order to provide the proper context for this issue, the Board also provides background information on what occurred during a site visit and what the Board's standard practice is with respect to mediation. In all cases, the Board tries to prepare decisions in a format which outlines specific reasons why the Board makes a ruling. Every issue included in an appeal is analyzed and presented in plain language so the public can understand how the Board came to its conclusion. This makes the Board accountable and clearly shows the participants involved in the matter, that their evidence and arguments are understood. Decisions are also reviewed for plain language by the Board's General Counsel and Settlement Officer, Senior Research Officer, Board Secretary, and Registrar of Appeals. Overall, these examples demonstrate the importance the Board places on writing decisions that are meaningful and understandable to all readers.

The Board also strives to use plain language in its correspondence and revises letters to participants as appropriate. An example is the revision of correspondence that addresses specific legal procedures with respect to a Board hearing. The Board revised its correspondence to include a detailed description outlining the purpose of cross examination, rebuttal evidence, and filing for costs. The revised letters explain to participants how to best provide their information and make representations to the Board. The Board's Participants' Agreement to Mediate document is also currently under review. The objective is to look at ways of shortening the document and reviewing it for proper plain language use.

The Board's Secretary regularly reviews the Board's website to include plain language concepts in its web design. It is important to create a layout that helps readers find information quickly. Readers

who frequent the Board's site are interested in the types of decisions the Board issues. For convenience, in 2005-06, the Board added a summary of all decisions to date beside the full-text decision. Where applicable, the Board also added scanned versions of judicial reviews that correspond to specific decisions. This layout provides easy access to all information pertaining to a specific decision rather than having to find the same information on different web pages. This enables readers to locate information efficiently.

Effective use of plain language promotes clear communication. It is more likely that readers will understand information presented to them and, as a result, empowers the Board to provide a better service to the public.

**Strategy C: The Board will provide a fair hearing process.**

**Performance Measure**

1.9 Provide primary participants with a complete copy of the appeal file in accordance with the law.

**Target:** 100% of primary participants will receive a complete copy of the appeal file.

**Target Met** Yes

**Results**

In order to promote fairness, the Board provides all participants to an appeal with an identical copy of the appeal file. Between April 1, 2005 and March 31, 2006, the Board received 73 appeals and distributed copies of all information it received. The Board received an incomplete copy of the Director's Record from Alberta Environment with respect to Appeal Number 04-090. The record included a single-sided copy of a document that should have been produced double-sided. The information was later provided and submitted to the participants for review.

Information from an appeal may not be shared during mediation. At times, participants involved in mediation may wish to disclose information to the mediator only in a private meeting. This information is kept confidential and is not shared with the rest of the participants. Rarely do participants request to not have information disclosed to the other side; however, when they do, guidelines around mediation protect the confidentiality of such a request.

In order to advance appeals quickly and in accordance with the law, the Board requests background records within two weeks of an appeal being initiated. Once Alberta Environment's record is received, the Board sends a complete copy to all participants. The majority of files are distributed immediately; however, files that are significantly large or complex, are distributed within five working days.

In 2005-06, Power Press, the Board's electronic document management system, became integrated. As a result, the system has streamlined the Board's processes with respect to producing electronic and colour copies of its files. With respect to electronic copies, Power Press allows the Board to convert appeal files from paper to electronic format. In 2005, the Board began providing an option to appeal participants to receive electronic versions of Alberta Environment's record. Electronic files provide participants information on CD that is compact and easy to search. On occasions where Alberta Environment's record is large, for example the Board's appeal involving Tartan Energy Inc. (04-123-124), some of the participants appreciated having access to an electronic version in addition to a paper version for their reference. Power Press is also used to reproduce colour documents included in the Board's appeal files, 10 year report, annual reports, and business plans. Since the majority of

colour reproduction is now completed in house, participants receive colour copies much faster and at a reduced cost to the Board compared to past years.

**Performance Measure**

1.10 In accordance with the law, provide participants a fair opportunity to present input prior to the Board making its final decision.

**Target:** 100% of participants will have an opportunity to provide input.

**Target Met** Yes

**Results**

The Board requests participants provide input, through oral or written submission processes, before the Board makes its final decision. Participants also have input in scheduling dates for mediation, preliminary meetings, and hearings. A few examples of encouraging participants to provide input from April 1, 2005 to March 31, 2006, are provided below.

With respect to Appeal No. 02-079 and 02-080 regarding AAA Cattle Company Ltd., the Board set up a written submission process to assess if the Board had jurisdiction to hear the appeals. The Board needed to determine if the Appellants received notice of or participated in or had an opportunity to participate in one or more hearings or reviews under Part 2 of the *Agricultural Operation Practices Act* and whether all the matters included in the Notices of Appeal received by the Board were adequately dealt with. The Board sought comments in the form of initial, response, and rebuttal submission comments from the participants before it made a decision. The Board later received a Stay request and scheduled another written submission process to address that matter. With respect to the same appeal, the Board received two requests to place the appeals into abeyance. The requests were prompted as the matter was also under appeal with the Alberta Court of Appeal. Prior to making a decision with respect to the abeyance, the Board gave all participants involved an opportunity to provide additional comments. Upon the issuance of the Court of Appeal decision, the Board provided the participants with yet another opportunity to provide comments before making its final decision. The participants were given an opportunity to comment on the effect the Court of Appeal decision had on the appeals and if the Board should re-open the submission process with respect to jurisdiction.

The Board also takes into consideration participants' circumstances when setting its deadlines for its submission process. For example, circumstances such as access to a computer or fax machine, or the time it may take to deliver information to a distant or remote location are taken into account.

**Performance Measure**

1.11 In accordance with the law, Board hearings and preliminary meetings will be open to the public for viewing only, and appeal files will be made available to the public for viewing.

**Target:** Hearings and preliminary meetings will be open to the public 100% of the time. Appeal material will be available to the public for viewing 100% of the time.

**Target Met** Yes

## **Results**

The Board encourages public awareness and involvement in its appeal process. In accordance with the principles of administrative law, all hearings and preliminary meetings are open for public viewing.

The Board informs the general public when a hearing will occur by placing advertisements in newspapers published in the geographic area of the project under appeal or in the area where the appeal originated. In addition to newspaper advertisements, the Board publishes its hearing advertisements as news releases on the Government of Alberta website under news at [www.gov.ab.ca](http://www.gov.ab.ca). These news releases are also distributed to 95 daily newspapers, radio stations, and television stations within Alberta. Advertisements advise the public that any person, other than the participants, can make an application in writing to the Board requesting permission to make presentations at the hearing.

In 2005-06, the Board expanded its advertisement distribution lists to include municipal districts and First Nations Reserves in areas where the appeals originate and where the hearings take place. This change was made to inform additional citizens in these areas who may have an interest in the appeal process.

For hearings or preliminary meetings where the Board expects a large public turnout, Board staff prepare information packages for those in attendance. For convenience and ease of reference, the information package includes a brief summary outlining the significant points of the appeal.

As soon as a preliminary meeting or hearing is scheduled, the Board posts all dates and information to its website at [www.eab.gov.ab.ca](http://www.eab.gov.ab.ca).

For convenience, complete hard copies of all active appeal files are available for viewing at the Board's office in Edmonton.

Once a hearing is set, the Board's regulations require that a complete copy of the appeal file must be available to the public for viewing. It is the Board's standard practice to provide a copy of its file to a library near the location of where the appeal originated or in the vicinity of the project under appeal. This practice allows the participants and the general public in the area to conveniently view the appeal file without having to travel to the Board's Edmonton office. From March 31, 2005, to April 1, 2006, the Board sent out one viewing package.

Beginning in the 2005-06 fiscal year, the Board began scanning all active appeal files using its electronic document management system. This process makes it much easier to provide a paper or electronic copy of an appeal file to any interested person.

## **Performance Measure**

1.12 Carry out Board processes in accordance with the principles of natural justice and procedural fairness.

**Target:** Yes/No

**Target Met** Yes

## **Results**

What is of fundamental importance to the Board is that, subject to its legislative mandate, every person is able to participate and is given equal access to the Board and its processes. The Board



adheres to the principles of natural justice and procedural fairness by ensuring all participants involved in an appeal obtain a complete copy of the appeal file, including a copy of the record in relation to the appeal from Alberta Environment.

The Board also provides participants ample opportunity to provide input and respond to matters that are before the Board. Input can be provided in the form of requesting extensions, providing submissions, and requesting intervenor or full party status to an appeal.

In matters where there is a significant public interest in a hearing or preliminary meeting, the Board provides information packages in relation to the appeal. These packages provide a summary of the appeal and its history.

Hearings and preliminary meetings are open to the public for viewing and a complete copy of the Board's file is available to the public to promote openness, transparency, and public awareness.

**Performance Measure**

1.13 Prepare decisions and reports within legislated time frames.

**Target:** 95% of decisions will be prepared within legislated time frames.

**Target Met** Yes

**Results**

From April 1, 2005 to March 31, 2006, the Board issued 39 written decisions including 10 Decisions, 14 Costs Decisions, 3 Report and Recommendations, and 22 Discontinuance of Proceedings.

In 2005-06, 100 percent of the Boards decisions were prepared within its legislated time frames. This is an improvement over last year when the Board requested two extensions.

The Board tries under all circumstances to prepare its decisions within timeframes outlined in the *Environmental Protection and Enhancement Act* and the *Water Act*. However, at times, due to unforeseen circumstances and complexity, the Board may require additional time to complete certain files.

**Strategy D: The Board will strive to continually improve the way it conducts its processes.**

**Performance Measure**

1.14 Monitor feedback by participants and public on a continual basis.

**Target:** Yes/No

**Target Met** Yes

**Results**

The Board receives feedback through a variety of means including newspaper clippings, via its website, through the Board's mediation surveys, in person at Board hearings and preliminary meetings, through telephone calls and written correspondence. At hearings and preliminary meetings board staff answer questions and address concerns raised by members of the public and media. Feedback and comments are used to revise Board procedures. The Board considers all input valuable and uses it whenever possible to improve the Board's processes.

On occasion, the Board has been advised that participants feel overwhelmed by the amount of work needed to process an appeal. Correspondence from the Board encourages all participants to contact Board staff for assistance in understanding the process and clarification of requirements as needed. For convenience and when necessary, Board staff respond to telephone calls and schedule meetings with participants outside regular work hours.

#### **Future Focus**

The Board is considering the creation of an overall participant survey that would monitor the satisfaction of Board's procedures and processes from initial to final contact. The objective of the survey would be to monitor and use feedback to improve the way the Board carries out its processes.

#### **Performance Measure**

1.15 Conduct stakeholder consultations as appropriate.

**Target:** Yes/No

**Target Met** Yes

#### **Results**

In 2004, the Environmental Law Centre ("ELC") began a stakeholder consultation project to assess public access to the Environmental Appeals Board. The objective of the project was to review accessibility of environmental regulatory processes in Alberta, and in the analysis was a review of the Board's decisions and practices. Given the timing of this initiative, the Board thought it appropriate to not conduct its own stakeholder consultation and instead review and respond to the findings of the ELC report. The final report was not published by March 31, 2006; however, initial project findings<sup>2</sup> revealed areas of concern for individuals and groups in accessing the Board's processes. Specifically, concerns included topics relating to standing, procedure, and costs. The preliminary results indicated "standing is a problematic area that is not well understood by appellants" and that some participants found the Board's processes to be overly legalistic. Stakeholders also noted "there is limited public awareness and understanding of the EAB's role and its process" and participants have a "lack of certainty and predictability with respect to costs." Upon receiving the preliminary findings in 2005, the Board made a number of changes such as drafting information sheets to send out to participants with respect to standing and costs. Regarding the concern that some of the Board's procedures were too legalistic, the Board amended a number of letters making them easier to understand. As of March 31, 2006, the Board is awaiting final release of the ELC report.

#### **Future Focus**

The Board plans to receive the final ELC project report in May 2006. Upon receiving the findings, the Board's objective is to thoroughly review the comments and recommendations proposed by the ELC and work collaboratively with stakeholders to develop ways within the law to improve the appeal process for all Albertans.

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<sup>2</sup> Initial project findings were noted in an article entitled "ELC Assessment of EAB Accessibility Nears Completion" written by Cindy Chiasson, Executive Director, Environmental Law Centre, New Brief, Volume 19, No. 4, 2004.

The Board plans to review its current Rules of Practice and will consider the ELC findings when undertaking this initiative. Once revisions are made to the current Rules of Practice, the Board plans to arrange a consultation to obtain responses from stakeholders.

**Goal #2:**

**PROCESS: Effective and efficient resolution of all matters before the board.**

**Strategy A: The Board will use mediation where appropriate.**

**Performance Measure**

2.0 Monitor the number of appeals successfully resolved through mediation.

**Target:** 70% of appeals resolved through mediation.

**Target Met** Yes

**Results**

From April 1, 2005 to March 31, 2006, the Board held 22 mediations in relation to 73 appeals and 17 were successfully resolved. Of these 17 mediations, the Board issued 15 Discontinuance of Proceedings and 2 Reports and Recommendations.

The Board has experienced a great deal of success with its mediation program and has received positive feedback from participants who have been involved in mediation in the past. Mediation encourages participants to work together to resolve a dispute in a consensual manner, through two-way dialogue. Mediation allows participants to voice their concerns in a private setting and in many cases it helps to build or maintain existing relationships, which is especially important because many participants who come before the Board are in long-standing relationships. Participants have provided feedback to the Board about their own mediation experience where they appreciate having an opportunity to speak, explain, and be listened to. Participants want their views to be heard and considered, and to have an opportunity to express their views in a responsive environment.

Those who participate in mediation before the Environmental Appeals Board have an opportunity to not only voice their concerns, but to work collaboratively with other participants to develop a resolution that will ensure most, if not all, of their concerns are addressed and resolved. Mediation enables parties to an appeal to exercise flexibility and creativity in drafting a resolution while often maintaining or improving relationships.

**Performance Measure**

2.1 Post information related to the mediation process to the Board's website.

**Target:** Information reviewed 2 times per year and updated if necessary.

**Target Met** Yes

**Results**

In 2005-06, mediation resources and information were added to the Board's website. The website now includes information on the Board's mediation program, a frequently asked questions section, a mediation links area that includes an extensive mediation bibliography sorted by category, and

pictures of the Board's mediation facilities located in Edmonton<sup>3</sup>. For interest and convenience, the Board has also posted publications specifically related to mediation in relation to administrative tribunals including: *Amicable Dispute Resolution: The Mediation Alternative and the Alberta Environmental Appeals Board* and *Using Mediation in Canadian Environmental Tribunals: Opportunities and Best Practices*.

#### **Performance Measure**

2.2 Conduct satisfaction surveys at the conclusion of each mediation.

**Target:** 100% of surveys sent out.

**Target Met** No

#### **Results**

During the 2005-06 fiscal year, the Board distributed 97 mediation surveys and received 52 responses. The Board distributed a mediation survey at the conclusion of each mediation with the exception of Slave River Exploration Ltd. (now Midnight Oil and Gas), Appeal Nos. 02-152, 03-001-003 and 03-005-006<sup>4</sup>. The Board opened this file in April 2003, and although three of the Appellants reached an agreement, the Board had to make a decision with respect to preliminary motions regarding the three remaining appeals before the resolution could be finalized. The Board began processing the remaining appeals; however, it received a request from the Licence Holder to hold the appeals in abeyance so they could explore alternative water sources. The Board granted the abeyance and in due course, received notice from the Licence Holder that it was relinquishing the licence. As a result, the Appellants withdrew their appeals, and the Board issued a Discontinuance of Proceedings on October 5, 2005, and closed its file. As a result of the two year abeyance requested by the Licence Holder, the Board felt too much time elapsed between the mediation date and closing the appeal to send out a mediation survey.

For the remaining appeals, the Board distributed satisfaction surveys at the conclusion of each mediation. Participants were asked to complete questions that assess their level of satisfaction regarding the quality of the Board's mediation program. The results of the surveys are kept anonymous. Finding out what participants liked, disliked, and what could be improved upon helps the Board make changes and streamline its mediation program. The Board also uses this feedback when conducting Board member training sessions where staff and members discuss new ways to deal with issues and concerns.

In 2005, the Board began summarizing all survey feedback. Participant anonymity is protected and feedback is circulated to Board staff and members. Survey feedback is a valuable resource in that it identifies issues or concerns raised by participants. Board members find this information useful as comments give insight into how mediation is viewed from the participant's perspective.

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<sup>3</sup> Although the pictures are of the Board's facilities in Edmonton, mediations are held throughout the province.

<sup>4</sup> County of Grande Prairie No. 1 et al. v. Director, Northern Region, Regional Services, Alberta Environment re: Slave River Exploration Ltd. (now Midnight Oil and Gas) (05 October 2005), Appeal Nos. 02-152, 03-001-003 and 03-005-006-DOP (A.E.A.B.).

According to mediation survey feedback, the majority of participants agree that mediation takes less time and costs less than a hearing. Even if a resolution is not reached, mediation may still reduce the length of a hearing since mediation can be used to narrow issues and agree upon facts or information for a hearing. Overall, mediation usually reduces administrative and legal costs for everyone involved.

#### **Performance Measure**

2.3 Encourage participants to use mediation where appropriate.

**Target:** Yes/No

**Target Met** Yes

#### **Results**

The Board believes strongly in using mediation as much as possible to assist participants to resolve concerns that come before the Board. Board staff educate participants and encourage the use of mediation whenever possible by providing information in the Board's initial correspondence when an appeal is filed and later in the process, as appropriate. This information helps to prepare participants on what to expect during mediation. The Board has found that participants who have not been involved in mediation before find it helpful when staff or the mediator is available to answer questions or concerns about the mediation process. Mediations are often held in different locations around Alberta to be convenient to the participants. Where possible, participants are welcome to view mediation facilities beforehand, as well as visit the Board's facilities in Edmonton.

The Board also encourages the use of on-going, informal discussions between the participants with the hope of resolving matters before mediation takes place. For example, the Board granted a number of abeyances requested by the participants of Appeal Nos. 05-001 and 05-003. The abeyances spanned a four-month period and were requested in order to carry out informal discussions between the participants with the hope of resolving the matter. Although the Board had to, in this instance, schedule a mediation, the participants benefited from having an opportunity to participate in discussions before the mediation took place.

The Board encourages the use of mediation and provides information about mediation on its website at [www.eab.gov.ab.ca](http://www.eab.gov.ab.ca). Under "About Mediation," the Board's website outlines the benefits of using mediation, which include: creates a level playing field for participants; provides flexibility; informal setting; remains private/confidential; promotes a mutually-agreeable solution; promotes creative solutions; gives participants control over the final solution/outcome; promotes positive communication and understanding; preserves existing relationships; and is provided free of charge.

Having an opportunity to participate in mediation can be beneficial in that participant's are often surprised about the positive outcome that can result. Mediation can be an educational resource that can increase communication and possibly prevent conflict from occurring in the future.

**Strategy B: The Board will strive to continually improve the way it conducts its business.**

#### **Performance Measures**

2.4 Where a problem occurs, staff will meet to develop a solution and apply it to the particular situation, and to Board processes generally where appropriate and necessary. Where necessary, staff will consult and seek approval from the Board.

**Target:** Yes/No



**Target Met Yes**

**Results**

The Board receives feedback from participants who have an appeal before the Board. Staff meet regularly to discuss active appeals and how to address concerns as they arise.

For example, the Board received a number of telephone calls from individuals who were confused about filling out a particular section of the Board's Notice of Appeal form. The issue was with respect to writing in specific section numbers pertaining to legislation noted on the form. Staff met, discussed the issue and decided to amend the Notice of Appeal form by listing the relevant section numbers that may apply to the appeal.

The Notice of Appeal form was revised again to reflect a change with respect to legal representation. For clarification, the Board revised its Notice of Appeal form from saying "You have the option of asking someone to represent you" to "If you are being represented, please supply the following information." This revision was made to avoid confusion about who would be responsible for providing legal representation to participants.

Board staff has received feedback advising that participants sometimes feel overwhelmed by the amount of work needed to process an appeal. In 2005, the Board's correspondence letters were amended to encourage all participants to contact Board staff for assistance and clarification as needed. Board staff also make themselves available, including after regular business hours, to respond to telephone calls and meet with participants who are having difficulty with the process or need questions answered.

**Future Focus**

For 2006-07, the Board is considering creating a participant survey which will be sent out at the conclusion of each appeal. The goal of the survey would be to receive feedback from all participants regarding their satisfaction with the Board's procedures and processes from initial to final contact. Participants will also be able to provide specific feedback which the Board can use to improve the way it conducts its business.

**Performance Measure**

2.5 Staff will meet regularly to review the Board's appeal processes and identify opportunities for improvement. Where necessary, staff will consult and seek approval from the Board.

**Target:** Senior staff will meet quarterly to review appeal processes.

**Target Met Yes**

**Results**

Staff meets as required to discuss active appeal files and current projects that are before the Board. Staff may also meet informally on a daily basis to discuss, brainstorm, and implement action as required.

**Performance Measure**

2.6 Monitor feedback from participants and the public on a continual basis.

**Target:** Yes/No

**Target Met Yes**

**Results**

Board staff monitor feedback on a regular basis and implement changes to the Board's current processes to address this feedback. Please refer to performance measure 2.4 for examples of how the Board has responded to feedback it has received during 2005-06.

**Performance Measure**

2.7 Conduct stakeholder consultations as appropriate.

**Target: Yes/No**

**Target Met Yes**

**Results**

From April 1, 2005 to March 31, 2006, the Board decided not to conduct a stakeholder consultation because of the Environmental Law Centre's stakeholder consultation project on the Environmental Appeals Board. The ELC reviewed the Board's decisions and practices and also interviewed individuals who have appeared before the Board. Initial project findings revealed areas where improvements could be made and where individuals and groups have experienced difficulties in accessing the Board's processes. The concerns centre around standing, procedure, and costs. Specifically, the results indicated "standing is a problematic area that is not well understood by appellants" and that some participants found the Board's processes to be overly legalistic. Stakeholders also noted "there is limited public awareness and understanding of the EAB's role and its process" and participants have a "lack of certainty and predictability with respect to costs." As of March 31, 2006, the ELC project was nearing completion; however, final results have not been published. Upon receiving the preliminary findings in 2005, the Board responded by drafting information sheets to send out to participants with respect to standing and costs. Regarding the concern that some of the Board's procedures were too legalistic, the Board amended a number of letters making them easier to understand.

**Future Focus**

Upon receiving the final version of the ELC's report, the Board plans to review the findings.

**Strategy C: The Board will work to streamline its procedures.**

**Performance Measure**

2.8 Consolidate appeals where appropriate.

**Target: Yes/No**

**Target Met Yes**

**Results**

In order to reduce inefficiency and duplication, the Board consolidates appeals whenever possible. This allows the Board to address concerns quickly by streamlining its procedures, which saves time and resolves matters in an expedient, efficient, and cost-effective manner. From April 1, 2005 to March 31, 2006, the Board received 73 appeals that were consolidated into 32 appeal proceedings.

The Board usually combines its appeals under one of three categories: 1. same approval, different appellants; 2. same appellants, different approval; and 3. same facility, different approvals. In 2005-06, the majority of the Board's decisions were grouped under the same approval, different appellants category.

By combining appeals the Board is able to process multiple appeals, hold multi-party mediations, be environmentally responsible by using less paper, and reduce staff time and costs.

**Performance Measure**

2.9 Use written versus oral submission processes for matters where appropriate.

**Target:** Yes/No

**Target Met** Yes

**Results**

In 2005-06, the Board issued 17 Decisions and Reports and Recommendations in relation to 8 written preliminary matters, 2 oral preliminary meetings, and 1 oral hearing.

In order to streamline its procedures, the Board processes the majority of its appeals through written versus oral submissions. The Board considers written submissions an effective and efficient way to process appeals because it allows the Board to deal with issues quickly and avoid time delays and scheduling problems associated with oral proceedings. This is particularly relevant for this Board because all members, including the Chair and Vice-Chair, serve part-time. Written submission processes benefit participants in that they have more time to provide a considered response to a matter, they do not have to take time off work, and they do not have to travel to a venue for an oral submission process. However, in complicated cases where evidence is needed, the Board will request or grant an oral preliminary meeting. In cases where a matter is appropriate for a hearing, the Board will usually schedule an oral submission process. However, if the issues under consideration in a hearing are strictly a matter of law, the Board may grant a written hearing.

**Performance Measure**

2.10 Prepare decisions and reports within legislated timeframes.

**Target:** 95% of decisions and reports completed within legislated time frames.

**Target Met** Yes

**Results**

From April 1, 2005 to March 31, 2006, the Board issued 39 written decisions including 14 Decisions, 3 Report and Recommendations, and 22 Discontinuance of Proceedings. Two of the Report and Recommendations related to mediations and one related to a hearing. The Board completed 100 percent of its decisions and reports within its legislated timeframes.

In some instances, the Board distributes letters to the participants indicating the decision that has been made with respect to a particular matter with reasons to follow, thereby allowing the appeal process to continue while the decision is being prepared.

**Strategy D: The Board will provide information regarding its processes.**

**Performance Measures**

2.11 Send information packages with respect to filed appeals.

**Target:** Packages sent within 3 working days.

**Target Met** Yes

**Results**

From April 1, 2005 to March 31, 2006, the Board received requests with respect to active and closed appeal files as well as general information about the Board. The Board met its performance measure by distributing information packages within three working days for all requests it received.

The Board tries to accommodate all requests for information from participants, the general public, and the media. In situations where there is a significant interest by the public in a hearing or preliminary meeting, the Board provides packages on the file and the order of proceedings for those attending. These packages provide a clear and concise summary of the appeal and its history.

In 2005-06, the Board noticed a decline in the number of requests for information packages it received. This could be attributed to Board publications now being available for viewing and downloading on the Board's website.

**Performance Measure**

2.12 Ensure participants to an appeal are sent copies of correspondence, decisions, and reports.

**Target:** Yes/No

**Target Met** Yes

**Results**

Between April 1, 2005 and March 31, 2006, the Board received 73 appeals. On all appeals, the participants received copies of all correspondence from the date the appeal was filed. Information packages are distributed as quickly as possible to allow the participants suitable time to review the materials and prepare their submissions.

In order to advance appeals quickly, the Board requests background records regarding the appeal from Alberta Environment be provided to the Board within two weeks of opening a new file. Once Alberta Environment's record is received, the Board sends a copy of it to the participants within five days, depending on the size of the file.

Decisions and reports are immediately distributed to all participants once issued. However, where email distribution is not feasible, the Board will send information in a manner that best suits the recipient.

The Board must produce large quantities of documents and is required to provide copies to all participants within tight timelines in accordance with the principles of administrative law. In order to streamline its processes, avoid duplication, and conduct its work efficiently, the Board uses Power Press, its electronic document management system. Power Press allows the Board to convert appeal files from paper to electronic format, which results in having a duplicate image of the Board's master

file in electronic form. This makes providing copies of each appeal to participants more efficient and results in an exact copy of the file being produced for all participants. Power Press incorporates on-site colour printing, which allows the Board to reproduce colour documents at a faster rate and lower cost than outsourcing.

**Strategy E: The Board will seek opportunities for innovation.**

**Performance Measure**

2.13 Examine new technologies as the Board becomes aware of them.

**Target:** Yes/No

**Target Met** Yes

**Results**

In 2005-06, the Board began researching the possibility of creating a mediation video for the Board's website. The Board developed a partnership with Alberta Municipal Affairs, Dispute Resolution Services, to create a joint video for the Environmental Appeals Board and Municipal Affairs. The object is to produce a public education video that introduces and summarizes the essential qualities of the mediation process.

As well, the Board is researching digital audio recording equipment to make electronic copies of its oral proceedings. These proceedings would be copied on compact disks and distributed to those interested. Electronic recordings of oral proceedings could also be accessed through the Board's website.

The Board is also looking at the possibility of posting copies of its active appeal files on its website, so they will be available to the public over the Internet. This would contribute to the openness and transparency of the Board's processes.

**Performance Measure**

2.14 Keep in contact with other agencies, tribunals, and organizations on new ways to conduct Board business.

**Target:** Yes/No

**Target Met** Yes

**Results**

Board staff attended the Council of Canadian Administrative Tribunals ("CCAT") 21<sup>st</sup> Annual Conference: Administrative Justice in the Modern Canadian Mosaic. The conference hosted 60 speakers who spoke on a variety of administrative law issues, and it provided an opportunity for Board staff to meet colleagues from administrative tribunals across Canada. CCAT is a national organization dedicated to supporting the work of administrative tribunals and promoting excellence in administrative justice. The conference was an opportunity to share the work of the Board, as well as learn what international communities, governments, and organizations are doing to promote better administration of justice.



In 2005, the Board increased its CCAT memberships from one to three. CCAT provides a venue to work in partnership with tribunals, appointees, and staff of administrative agencies, and facilitate communications among its members with information on matters of interest to the administrative tribunal community.

In late 2005, the Board co-hosted the 17<sup>th</sup> Annual Environmental Lawyers in Government Conference along with Special Prosecutions and the Environmental Law Section of Alberta Justice. The three-day conference was an opportunity for provincial and federal lawyers to share ideas on environmental law that promote environmental protection across Canada.

Board staff provided assistance coaching other government departments who conduct alternative dispute resolution training including Alberta Municipal Affairs, Alberta Justice, and Alberta Sustainable Resource Development. The Board places a high value on modeling, using, and teaching interest-based principles. Coaching for these training sessions provides an opportunity to assist others in government to learn and implement these beneficial skills, as well as maintain contact with other organizations using these principles.

The Board provided its hearing room facilities to the Municipal Government Board to conduct their hearings.

In 2006, the Board was added to the Government Dispute Resolution Network. Members are employees of the Government of Alberta which include a broad cross section of departments and agencies. The purpose of the organization is to advance the understanding and use of dispute resolution alternatives and collaborative, consensus-based decision making processes across government.

The Board plans to co-sponsor and participate in the Alternative Dispute Resolution Institute of Canada Inc.'s Annual General Meeting for 2006. The annual meeting will be held in Western Canada and will share information on arbitration and mediation practices across Canada.

### **Goal #3:**

#### **COMMUNITY: Sharing ideas and exchanging information**

**Strategy A: The Board will provide public presentations and training.**

##### **Performance Measure**

3.0 Agree to reasonable requests from the community, government, or business to make presentations.

**Target:** Agree to 100% of requests for presentations.

**Target Met** No

##### **Results**

From April 1, 2005 to March 31, 2006, the Board was asked to make 28 presentations. The Board made 26 presentations which were conducted by the Board's Chair, Board members, or Board staff. Due to prior commitments, the Board's General Counsel and Settlement Officer had to decline delivering an evidence course on behalf of the Alberta Foundation of Administrative Justice and a presentation at the Canadian Institute's Environmental Law and Regulation Conference.

Of the 26 presentations that were made, the subject matter varied from alternative dispute resolution, innovations in environmental law, administrative law, tribunal independence, and issues and processes under Alberta legislation. (See Appendix C for a complete list of the Board's presentations during this reporting year.)

**Strategy B: The Board will provide information on the Board to the public.**

**Performance Measure**

3.1 Maintain and update Board's website on a regular basis.

**Target:** Update the Board's website on a weekly basis.

**Target Met** Yes

**Results**

In April 2005, the Board added a "News Releases" section to its website. This section advises the public on current events with respect to the Board. The section also posts recent articles and speeches.

In December 2005, the Board added decision summaries to its website. The summaries are a brief synopsis of each Board decision and this provides a quick overview of the file.

Over the period of 2005 to 2006, the Board updated its website on a weekly basis to ensure all information was relevant and schedules were up-to-date.

The Board created a section on its website specifically devoted to mediation. The section includes information describing Board mediations, when mediation is and is not appropriate, a frequently asked questions section, pictures of its mediation facilities located at its office in Edmonton,<sup>5</sup> and helpful mediation Internet links. The Board also included publications specifically related to mediation and administrative tribunals such as *Amicable Dispute Resolution: The Mediation Alternative and the Alberta Environmental Appeals Board* and *Using Mediation in Canadian Environmental Tribunals: Opportunities and Best Practices*.

**Performance Measure**

3.2 Distribute decisions and reports to legal publications/organizations/libraries, and others by request.

**Target:** Distribute requested information 100% of the time.

**Target Met** Yes

**Results**

From April 1, 2005 to March 31, 2006, the Board issued 39 written decisions including 14 Decisions, 3 Report and Recommendations, and 22 Discontinuance of Proceedings which were distributed to participants involved in the appeals, to various distribution lists, and to the media upon request.

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<sup>5</sup> Although the pictures are of the Board's facilities in Edmonton, mediations are held throughout the province.

Decisions are submitted to various legal publications to be considered for publication. The Board's decisions have been reported in the *Canadian Environmental Law Report* and have been published in the *Administrative Law Reports* and the *Alberta Law Reports*. Decisions have been the subject of scholarly analysis in law journals and have been widely reported in other legal and environmental publications. Selection of the Board's hearing decisions in these reports is a reflection of the importance and quality of Board decisions. Many of the Board's decisions are also reported in the media, such as newspapers and television.

The Board submits all of its publications and provides a bound version of its decisions to the Government of Alberta Depository Library Program on a yearly basis. The program ensures all publications are distributed to provincial and federal libraries and also to the United States Library of Congress.

In November 2005, the Board consulted with its decision distribution list recipients who received Board decisions by mail, fax, and email with respect to changing the distribution to email only. As a result, all participants decided to receive Board decisions via email only, and therefore, receive decisions in a timely manner and with the use of less paper compared to fax or mail.

**Performance Measure**

3.3 Publish public notices regarding Board processes as appropriate.

**Target:** Publish public notices for hearings 100% of the time.

**Target Met** Yes

**Results**

Between April 1, 2005 and March 31, 2006, the Board held 1 hearing and 2 oral preliminary meetings and placed advertisements in local papers as required. In the event of an adjournment or cancellation of a hearing, the Board places advertisements to notify the public. To help familiarize the public with the Board, the advertisements were revised to include additional information on the Board and its purpose.

**Strategy C: The Board will establish and maintain contact with other tribunals.**

**Performance Measure**

3.4 Review websites, business plans, and information of other tribunals.

**Target:** Yes/No

**Target Met** Yes

**Results**

The Board reviews publications from government and non-government organizations including Alberta Government Services, the Alberta Energy and Utilities Board, the Natural Resources Conservation Board, and the Environmental Law Centre.

**Performance Measure**

3.5 Attend relevant conferences and training opportunities when feasible.

**Target:** Yes/No

**Target Met** Yes

**Results**

From April 1, 2005 to March 31, 2006, Board staff attended various courses, including courses and conferences on mediation, administrative law, water resources, and land reclamation.

**Future Focus**

Staff is provided with ongoing learning opportunities that encourage them to acquire new skills and knowledge.

**Strategy D: The Board will reflect environmental values.**

**Performance Measure**

3.6 Provide staff with recycling facilities.

**Target:** Yes/No

**Target Met** Yes

**Results**

Staff are provided with recycling boxes in their offices.

Blue bags are provided for recycling cans, bottles, and other recyclable items.

Staff recycle paper and reuse items, such as binders, whenever possible.

**Performance Measure**

Engage in projects that promote protection of the environment.

**Target:** Yes/No

**Target Met** Yes

**Results**

In 2005, the Board co-hosted the 17<sup>th</sup> Annual Environmental Lawyers in Government Conference. The conference was a forum to share ideas on environmental law that promote environmental protection initiatives.

The Board's General Counsel and Settlement Officer hosts two lecture sessions per year on the importance of recycling and the environment for Japanese exchange students from the University of Alberta, Faculty of Extension. As a key component of their English as a second language program, students are introduced to the topic of recycling and how to minimize waste in their own country.

The Board's implementation of a new electronic document management system called Power Press streamlined its processes and helped to encourage environmental protection by allowing the Board to convert appeal files from paper to electronic format. This reduces the use of paper and duplication.

**Goal #4:**

**PEOPLE: Board Member and Staff Development<sup>6</sup>**

**Strategy A: The Board will provide educational opportunities for Board members**

**Performance Measure**

4.0 Inform Board members of environmental, ADR, administrative law and technical training initiatives.

**Target:** Yes/No

**Target Met** Yes

**Results**

Brochures on various training initiatives are sent to Board members.

The Board Secretary advises all new Board members of alternative dispute training initiatives as soon as they are appointed.

**Performance Measure**

4.1 Encourage participation in environmental, ADR, administrative law and technical training initiatives.

**Target:** Yes/No

**Target Met** Yes

**Results**

In 2005-2006, Board members attended mediation training through the Legal Education Society of Alberta. Training in mediation and negotiation through the Alberta Arbitration and Mediation Society had to be delayed due to scheduling conflicts.

The Board's General Counsel and Settlement Officer and Associate Counsel attended the Canadian Council of Administrative Tribunals (CCAT) International Conference in Ottawa in June 2005. The conference was an opportunity to share the work of the Board, as well as learn what international communities, governments, and organizations are doing to promote better administration of justice.

The Board's Projects Officer participated as a coach for alternative dispute training initiatives hosted by Alberta Municipal Affairs, Alberta Justice, and Alberta Sustainable Resource Development. The role of the coach is to assist in the teaching of conflict resolution principles, and provide mentorship and feedback to students. The coach also demonstrates and explains how students can integrate interest-based techniques and skills to communicate more effectively to their clients.

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<sup>6</sup>

Development initiatives are dependent on Board schedule and finances.



**Strategy B: The Board will provide staff with educational opportunities.**

**Performance Measure**

4.2 Inform staff members of various training initiatives.

**Target:** Yes/No

**Target Met** Yes

**Results**

From April 1, 2005 to March 31, 2006, Board staff attended various courses including:  
Legal Education Society of Alberta, Mediation of Civil Disputes I and II;  
The World of Negotiation, Mediation, and Arbitration;  
Alberta Environment's 2005 Conference: Connecting and Collaborating;  
First Annual Provincial Conference of the Alberta Foundation of Administrative Justice;  
Alberta Government Civil Lawyers Association Spring Conference;  
Advanced Mediation Training for Civil Claims Mediation Program Mediators;  
Canadian Water Resources Association Conference entitled "Reflection on Our Future – A New Century of Water Stewardship";  
The Council of Administrative Tribunals, Administrative Justice in the Modern Canadian Mosaic;  
Systems Thinking: Navigating Through Complexity;  
Alberta Arbitration and Mediation Society, Mediation Theory and Skills and Negotiation Theory and Skills Level I;  
Water and Land Use for the Oil and Gas Industry Conference.

**Performance Measure**

4.3 Encourage participation in ADR training.

**Target:** Yes/No

**Target Met** Yes

**Results**

Board staff attended conflict resolution training including Mediation of Civil Disputes through the Legal Education Society of Alberta, Negotiating Effectively through Alberta Municipal Affairs, and advanced training for Civil Claims Mediation Program Mediators through Alberta Justice.

Board staff attended the Canadian Bar Association section meetings relating to alternative dispute resolution.

The Board's General Counsel and Settlement Officer provides additional training to new Board members such as briefing Board members before mediations and providing constructive feedback after meetings.

Board staff annually attend the Alberta Arbitration and Mediation Society's general meeting and conferences. In April 2006, the Board's General Counsel and Settlement Officer and Projects Officer attended the conference entitled "The World of Negotiation, Mediation and Arbitration" and a clinic for Negotiators and Mediators with Dr. Benjamin C. Hoffman. The conference focused on the use of power in conflict and the challenges, tools, and techniques to move parties from a destructive to a constructive use of power.

The Board's General Counsel and Settlement Officer and Projects Officer participate as mediators in the Provincial Court's Civil Claims Mediation Program.

Board staff are panel members for the Alberta Arbitration and Mediation Society's Introduction to Alternative Dispute Resolution. The panel shares their experiences in completing the Society's training in conflict management, provides insight, and answers students' questions.

The Board's Projects Officer participated as a coach for alternative dispute resolution courses hosted by Alberta Municipal Affairs and Alberta Justice.

In 2005-2006, staff used learning account funds to purchase books on mediation, effective communication, and facilitation.

In 2006, the Board was added to the Government Dispute Resolution Network. Network members advance the understanding and use of dispute resolution alternatives. Members stress the importance of collaborative, consensus-based decision making processes by increasing the awareness of existing programs and resources within and outside of government.

**Performance Measure**

4.4 Encourage use of staff learning account.

**Target:** 100% of staff will use at least some portion of their learning account.

**Target Met** Yes

**Results**

From April 1, 2005 to March 31, 2006, Board staff used almost 100 percent of learning account funds. Staff used funds to purchase fitness memberships, fitness and computer equipment, personal interest courses, and books on alternative dispute resolution.

**Strategy C: The Board will encourage staff to hold memberships in relevant organizations.**

**Performance Measure**

4.5 Inform staff of relevant organizations.

**Target:** Yes/No

**Target Met** Yes

**Results**

The Board's Secretary informs all staff of new and relevant organizations for staff to join and participate in. Organizations are chosen as they relate to the career goals of each employee.

**Performance Measure**

4.6 Provide for memberships in mandatory organizations.

**Target:** 100% of mandatory memberships will be provided to staff.

**Target Met** Yes

**Results**

In 2005 to 2006, Board members and staff held memberships in a variety of organizations including the Law Society of Alberta, the Canadian Bar Association, the Institute of Public Administration of Canada, the Canadian Land Reclamation Association, the Council of Canadian Administrative Tribunals, the Alberta Government Civil Lawyers Association, the Alberta Arbitration and Mediation Society, and the Alberta Foundation of Administrative Justice. The Board is also a corporate member of the ADR Institute of Canada.

**Strategy D: The Board will promote a healthy workplace.****Performance Measure**

4.7 Inform staff of opportunities for wellness training.

**Target:** Yes/No

**Target Met** Yes

**Results**

Board staff are informed of wellness training initiatives through information sent out by the Board Secretary. Staff have access to internal resources that promote a positive, healthy, and safe work environment. Resources include newsletters, wellness guidebooks and initiatives that stress the importance of maintaining a healthy balance between personal and professional aspirations.

**Performance Measure**

4.8 Encourage staff to use learning account for health and wellness initiatives.

**Target:** Yes/No

**Target Met** Yes

**Results**

From April 1, 2005 to March 31, 2006, staff used learning account funds to purchase fitness equipment, fitness memberships, and nutrition programs.

**Performance Measure**

4.9 Encourage open, honest, and respectful communication, including being receptive to suggestions and ideas on improving the workplace.

**Target:** Yes/No

**Target Met** Yes

**Results**

Staff meet regularly to discuss new Board developments and are encouraged to share their thoughts or concerns. Staff are also encouraged to share their thoughts or concerns on a more informal basis.

Staff are consulted and are requested to fully participate in the Board's strategic planning and business planning initiatives.

In 2005, the Board began working on a mediation video with Alberta Municipal Affairs. Staff were encouraged to provide ideas for the video and were actively involved in the overall concept and script development.

**Strategy E: The Board will recognize contributions of its staff**

**Performance Measures:**

4.10 Provide informal recognition.

**Target:** Yes/No

**Target Met** Yes

**Results**

Staff are taken out for lunch in recognition for working on large projects, organizing conferences, and participating in various initiatives that require much staff time and effort. Emails are also sent to staff acknowledging commendable work. Recognition encourages teamwork and camaraderie among employees.

**Performance Measure**

4.11 Provide formal recognition.

**Target:** Yes/No

**Target Met** Yes

**Results**

In 2005 to 2006, the Board incorporated a formal recognition program recognizing employee contributions and years of service.

Recognition memos and letters thanking staff for their support and contributions regarding in-depth projects are distributed, as well as kept on personnel files.

The Board values its employees and encourages excellence by acknowledging staff for their contributions and commitment.

**Goal #5:**

**GOVERNMENT: The Board Will Support Applicable Government of Alberta Initiatives<sup>7</sup>**

**Strategy A: The Board will support the Government of Alberta's fiscal goals**

**Performance Measure**

5.0 Work to maintain a balanced budget.

**Target:** Yes/No

**Target Met** Yes

**Results**

The Board adheres to responsible fiscal management. In 2005 to 2006, the Board was allocated a working budget of \$1,069,000, and reported expenditures totaled \$918,912.

**Performance Measure**

5.1 Provide financial reporting as requested.

**Target:** Yes/No

**Target Met** Yes

**Results**

The Board works closely with the Ministry of Environment regarding budget allocation and responds to all requests in a timely manner.

**Performance Measure**

5.2 Promote fiscally responsible spending.

**Target:** Yes/No

**Target Met** Yes

**Results**

The Board takes all reasonable steps to control its expenditures. However, the workload of the Board is externally driven, and therefore the Board has little control over factors such as number of appeals filed, the location of the project being appealed, the complexity of issues, and the resulting associated costs of doing business.

In order to reduce the cost of processing appeals without compromising the principles of natural justice, the Board addresses appeals via written submissions, uses one person panels where

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<sup>7</sup> The Board will take all reasonable steps to control its expenditures; however, the Board's business is externally driven and, the Board therefore, has little control over factors such as number of appeals filed, location, and complexity of issues.



appropriate, holds conference calls among panel members versus in-person meetings, and combines appeals where appropriate.

The Board continues to encourage and resolve appeals through mediation. Compared to preliminary meetings or Board hearings, mediation is a more cost-effective approach to resolving disputes. During 2005-2006, the Board held 22 mediations, 2 oral preliminary meetings, and one hearing.

With the implementation of the Power Press system, the Board is now able to reproduce colour documents. In the past, colour reproduction needed to be outsourced by the Board, which took additional time and was a significant cost. In 2005, the Board used its colour equipment to reproduce the Board's 10 Year Anniversary Report. By printing this publication in house, the Board saved over \$3,000 in reproduction costs.

The Board cancelled subscriptions to the Judicial Review of Administrative Action in Canada, Carswell's Words and Phrases, NEPA Law and Litigation, and the Commonwealth of Pennsylvania Environmental Hearing Board Adjudications. Over the years, the Board has decided to reduce the number of publications it receives and, instead, obtain subscriptions or resources through the Government of Alberta libraries.

In researching the Board's new electronic document management system, staff compared six vendors. The Board made its final decision based on product, ease of use, associated costs, and system reliability.

**Strategy B: The Board will contribute to the Government of Alberta's Business Plan and goals.**

**Performance Measure**

5.3 Report to the Ministry of Environment as prescribed in the Memorandum of Understanding between the Minister of Environment and the Chair of the Environmental Appeals Board.

**Target:** Yes/No

**Target Met** Yes

**Results**

The Board provided the 2006-2009 Business Plan by March 31, 2005, and its 2004-2005 Annual Report to the Minister of Environment by June 30, 2005.

**Strategy C: The Board will support applicable cross-ministry initiatives.**

**Performance Measures:**

5.4 Participate in applicable cross-ministry initiatives where requested.

**Target:** Yes/No

**Target Met** Yes

**Results**

The Board agrees in principle with cross-ministry initiatives within the confines of the Board's jurisdiction and the principles of natural justice. From April 1, 2005 to March 31, 2006, the Board was not requested by the Ministry of Environment to participate in any cross-ministry initiatives.

**Performance Measure**

5.5 Seek opportunities to support applicable cross-ministry initiatives.

**Target:** Yes/No

**Target Met** Yes

**Results**

As part of the Board's ongoing commitment to support the Government of Alberta's cross-ministry initiatives with respect to Aboriginal Initiatives, in recent years, the Board has held three Alternative Dispute Resolution conferences entitled "Forging Partnerships Between Federal/Provincial Governments and Members of First Nations." The Aboriginal Policy Initiative seeks to develop collaborative projects to benefit Aboriginal communities and increase capacity within the Alberta government for collaboration with Aboriginal governments, organizations, and communities. The Board recognizes the important role of First Nations in the environmental regulatory process and discussed this during the conferences.

## ACCOMPLISHMENTS

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- In September 2005, the Board co-hosted the 17<sup>th</sup> Annual Environmental Lawyers in Government Conference. The three day conference brought together lawyers from across North America to discuss leading environmental issues dealing with economic viability, environmental policy, and sustainability.
- The Board is a Corporate Member of the ADR Institute of Canada and the Alberta Arbitration and Mediation Society. The Institute provides national leadership in the development and promotion of dispute resolution services in Canada, and the Society promotes appropriate conflict management and excellence in educational and dispute resolution services.
- The Board's decisions are frequently reported in the *Canadian Environmental Law Reports*. The Board's decisions have also been published in the *Administrative Law Reports* and the *Alberta Law Reports*. Selection of the Board's hearing decisions into these publications is a reflection of the importance and quality of Board decisions. Many of the Board's decisions are also reported in the media, such as newspapers and television.
- In 2006, the Board's Associate Counsel participated on the Premier's Award of Excellence Leadership Team. The Premier's Award of Excellence recognizes superior client service and business practices in the Alberta public service. The award serves as a standard of achievement and a guide to business excellence practices.
- The Board's General Counsel and Settlement Officer and Associate Counsel are part of the Executive of the Environmental Law Section (North) of the Canadian Bar Association. This involvement promotes contact with other environmental law practitioners and encourages the sharing of knowledge and the discussion of developing issues in the field of environmental law. Participation also involves contact with other agencies such as the Natural Resources Conservation Board and the Federal Department of Fisheries and Oceans.
- The Board's General Counsel and Settlement Officer hosts two lecture sessions per year on the importance of recycling and the environment for Japanese exchange students from the University of Alberta, Faculty of Extension. As a key component of their English as a second language program, students are introduced to the topic of recycling and how to minimize waste in their own country.
- The Board distributes surveys to participants following mediation. The surveys assess satisfaction or concerns with mediations conducted by the Board and are used to assist in making changes and improvements to the mediation process.
- The Board's decisions on providing access to information have never been appealed under the *Freedom of Information and Protection of Privacy Act*. This reflects transparency and openness of the Board's processes and the high quality of its decisions and recommendations.
- The Board is a member of the Council of Canadian Administrative Tribunals (CCAT). CCAT is a national organization dedicated to supporting the work of administrative tribunals, promoting excellence in administrative justice, and providing sound administrative decision-making.

- Board members and staff encourage public awareness of our processes by providing public presentations. (See: Appendix C for a listing of the Board's presentations from April 1, 2005 to March 31, 2006.)
- The Board's General Counsel and Settlement Officer taught at the University of Alberta, Faculty of Business undergraduate program on Natural Resources and Environmental Law, and guest lectured at the University of Alberta, Faculty of Law Alternative Dispute Resolution course, and the University of Calgary, Faculty of Law, Environmental Law course.

## STATISTICS – ANNUAL REPORT 2005/06

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### Appeal Statistics

- Number of Appeals – A total of 73 appeals were filed with the Board between April 1, 2005 and March 31, 2006. This brings the historical total number of appeals filed to 1,362. The average number of appeals per year for the past 12.5 years is 109.
- Time per appeal – The average time for processing an appeal, as calculated from the total number of appeals over the Board's existence, is 4.05 months per appeal.
- Mediation – As of March 31, 2006, 160 matters (calculated by Approval Holder, which corresponds to 624 appeals) have undergone mediation, of which 134 matters were successfully resolved. This demonstrates an 84 percent success rate. This reporting year, the Board held 22 mediations. 17 were successful (note that 2 successful mediations were carried over from last fiscal year and concluded in this fiscal year), 2 were unsuccessful, and 3 are ongoing.
- Mediation Surveys – Surveys sent-97; Surveys returned-52.
- Preliminary Meetings & Hearings – The Board held 2 oral preliminary meetings and 1 hearing.
- Judicial Reviews – Since the Board was established in 1993, there have been 33 judicial reviews stemming from 21 matters in relation to 36 appeals. Of the 33 judicial reviews, 8 were withdrawn and 25 proceeded. Of the 25 judicial reviews that proceeded, 13 upheld the Board's decisions, 8 were returned to the Board, 1 is pending, and 3 did not involve the Board. With respect to the 3 judicial reviews that did not involve the Board, 2 were judicial reviews of the Minister's decision only, and the Board was not named. The remaining judicial review initially named the Board along with the Provincial and Federal Governments. However, the Court held the judicial review was improperly filed against the Board and it should only be allowed to proceed against the Provincial and Federal Governments. In 2005-06, there were two Judicial Reviews.
- McColl-Frontenac Inc. filed a Notice of Abandonment at the Alberta Court of Appeal from the Judgment of the Honourable Justice Marceau in the Court of Queen's Bench, rendered April 4, 2003. On April 18, 2005, a Notice of Discontinuance was filed on behalf of Imperial Oil Limited and Devon Estates Limited pursuant to an agreement reached between the participants. The two notices indicate that the participants no longer wished to pursue their judicial reviews against the Board and withdrew their appeals.

- Sarg Oils and Sergius Mankow filed a judicial review in the Court of Queen's Bench on May 12, 1997 and it was heard on October 25, 2004. On July 18, 2005, the Court of Queen's Bench issued a Memorandum of Judgment of the Honourable Mr. Justice J.H. Langston setting aside the Board's Report and Recommendations dated December 5, 1996, and the Order of the Minister dated December 16, 1996, and the matter was referred back to the Board for a new hearing. The Attorney General filed a Notice of Appeal to the Court of Appeal on October 7, 2005.
- Report and Recommendations – The Board has historically submitted a total of 110 Report and Recommendations to the Minister with only 1 of the 110 not being accepted by the Minister. Of the 110 Report and Recommendations, 3 were submitted to the Minister this year, 1 was with respect to a hearing, and 2 were with respect to mediations. The Minister accepted all 3 Report and Recommendations. The Board does not maintain an average of the time it takes to issue a Report and Recommendations. The Board's legislation states that Reports issued as a result of mediation must be provided to the Minister within 15 days, and Reports issued as a result of a hearing must be provided to the Minister within 30 days.
- Decision Reports – The Board has issued 208 Decision reports to date. Of the 208 Decisions reports, 10 were issued this year.
- Costs Decisions – The Board has issued 31 Costs Decisions to date. Of the 31 Costs Decisions, 4 were issued this year. All 4 applications were for final costs and the Board awarded costs in 3 of those cases.
- The average time to issue Decisions and Costs Decisions in this reporting period is 10 months.
- Discontinuance of Proceedings – The Board has issued 191 Discontinuance of Proceedings since 1996. Of the 191, 22 were issued this reporting year. The average time to issue a Discontinuance of Proceedings in this reporting period is 7 days.

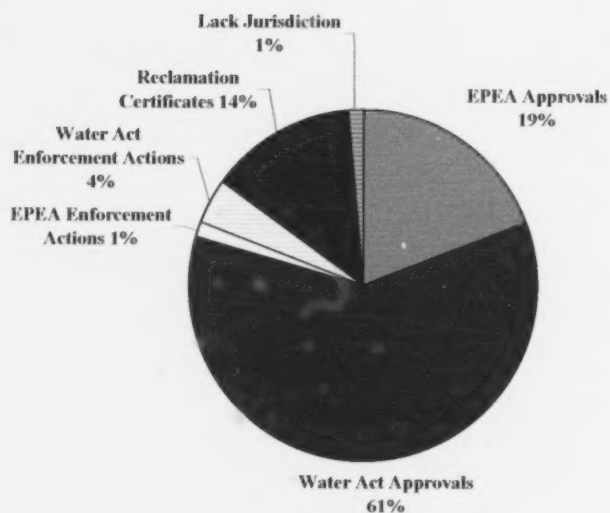


### Appeal Types

Chart I – During this year, the Board received 73 appeals relating to the following issues: 14 EPEA Approvals; 44 *Water Act* Approvals; 1 EPEA Environmental Protection Order; 2 *Water Act* Enforcement Orders; 1 *Water Act* Administrative Penalty; 10 EPEA Reclamation Certificates; and 1 lack of jurisdiction.

Chart I

Types of Appeals 2005-06



Total number of appeals by category since inception of the Board: EPEA Approvals-696; WA Approvals-462; EPEA EPOs-41; WA EPOs-3; EPEA EOs-8; WA EOs-10; GOA EOs-1; EPEA Administrative Penalties-18; WA Administrative Penalties-3; EPEA Reclamation Certificates-88; EPEA Contaminated Sites-9; and Lack of Jurisdiction-23.

Average number of appeals in each category over 12.5 years: EPEA Approvals-56; WA Approvals-37; EPEA EPOs-3; WA EPOs-0; EPEA EOs-1; WA EOs-1; EPEA Administrative Penalties-1; WA Administrative Penalties-0; EPEA Reclamation Certificates-7; EPEA Contaminated Sites-1; and Lack of Jurisdiction-2.

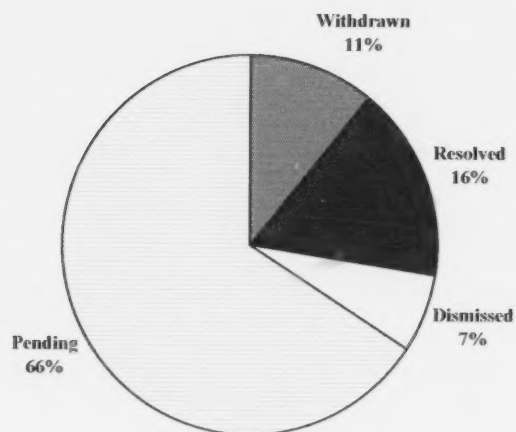
### Appeal Results

Chart II – The 73 appeals filed this year were dealt with as follows: 8 were withdrawn; 12 were resolved; 5 were dismissed; and 48 are pending.

Total number of appeals by disposition since inception of the Board: Withdrawn-337; Resolved-462; Dismissed-433; Allowed-77; Pending-53.

Chart II

Appeal Results 2005-06

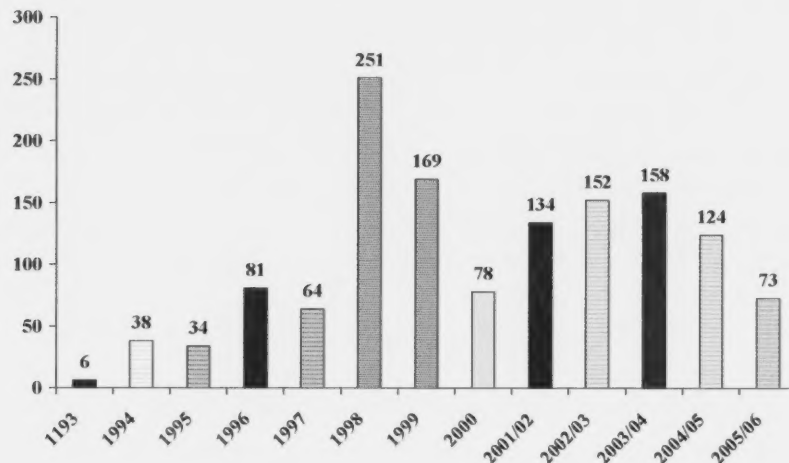


Average number of appeals by disposition over 12.5 years: Withdrawn-27; Resolved-37; Dismissed-35; Allowed-6; Pending-4.

### Number of Appeals

Chart III – 1993-6; 1994-38; 1995-34; 1996-81; 1997-64; 1998-251; 1999-169; 2000-78; 2001/2002-134; 2002/2003-152; 2003/2004-158; 2004/2005-124; and 2005/06-73.

Chart III  
Yearly Appeal Numbers



Six appeals were filed with the Board during the period of September to December 1993. During the 1994 calendar year, 38 appeals were filed. During 1995, 34 appeals were filed. In 1996, 81 appeals were filed. During 1997, 64 appeals were filed. In 1998, the Board received 251 appeals, of which 209 related to one approval holder. Of the 169 appeals filed in 1999, 115 related to 1 approval holder. During 2000, 78 appeals were filed which relates well to the 1997 numbers where there was no one particular approval which generated a majority of appeals for that year. 2001 saw an increase in the number of appeals filed to 134; however this increase is to some degree the result of the change in the timing of the reporting period for the 2001 annual report, which resulted in a 15 month reporting period as opposed to 12 a month reporting period. (The Board was required to switch to reporting based on the fiscal year instead of the calendar year.) The Board received 152 appeals from April 2002 to March 2003 and 158 appeals from April 2003 to March 2004. Over the course of these two reporting periods, the Board saw a similar number of appeals. Of the 152 appeals filed in 2002-2004, 27 of the 33 EPEA appeals received were with respect to 1 approval holder. Of the 108 *Water Act* appeals filed, 30 related to the same project. Of the 158 appeals filed in 2003-2004, 101 of the *Water Act* appeals dealt with only 3 approval holders. In 2004-2005, the Board saw a slight decrease in its total number of appeals, receiving 124. This decrease may correlate to a decrease in *Water Act* related appeals as compared to previous years. In 2004-2005, the Board received 48 *Water Act* appeals which account for only 39% of the total number of appeals received compared to 71% in 2002-2003 and 84% in 2003-2004. However, with the implementation of Alberta Environment's new reclamation program, the Board observed an increase in reclamation related appeals, receiving 16 appeals in 2004-2005 compared to 7 and 6 in 2002-2003 and 2003-2004 respectively. The Board received 73 appeals from April 2005 to March 2006.

Based on the cumulative number of 1,362 total appeals over 12.5 years of Board history, the Board is averaging 109 appeals per year.

## FINANCIAL INFORMATION

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**Summary of Spending Profile** – The workload of the Board is externally driven, and the costs will accordingly vary with the number of appeals filed. The generation of appeals is a matter that is beyond the Board's control.

Budget	2000/01 Actual	2001/02 Actual	2002/03 Actual	2003/04 Actual	2004/05 Actual	2005/06 Actual	2006/07 Estimate
Operating	898,502	921,169	1,018,518	959,000	1,046,000	1,069,000	1,101,000
Capital	0	0	0	0	0	0	
Total Expended	898,502	921,169	1,018,518	949,751	974,541	918,912	1,101,000

## CONCLUSION

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The Environmental Appeals Board is proud of the work it has completed during the 2005-06 fiscal year. We are looking forward to the opportunities and challenges the new year will bring. The Board remains committed to its mission and will seek out opportunities to improve its procedures to better assist those that who come before the Board or require our assistance. The Board will also work toward its operational goals, while meeting the needs and expectations of the Government of Alberta and its citizens.

The Board is interested in your feedback. If you would like to provide comments on this publication, or offer ways to improve it, please contact the Board at:

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**SUMMARY OF APPEALS**

**94-011**

**Appellant(s)** – Sarg Oils and Sergius Mankow, **Operator** – Sarg Oils, **Location** – Camrose, **Type of Appeal** – Active

**Overview** - On September 19, 1994, 16 appeals were filed by Sarg Oils and Sergius Mankow with respect to the issuance of 16 Environmental Protection Orders (EPOs). The EPOs required the Appellants take remedial action with respect to 16 abandoned well sites in Camrose.

**Decision** – On May 11, 1995, the Board issued a Decision indicating that the Director did not err in issuing the EPOs against Mankow and Sarg. The Board's decision underwent judicial review in the Court of Queen's Bench with a judgment stating that the Board must rehear the appeal.

Cite as: Sarg Oils Ltd. v. Director of Land Reclamation, Alberta Environmental Protection.

**Report and Recommendations** - A hearing took place on November 5 and 6, 1996, in Edmonton. The Board issued a Report and Recommendations to the Minister on December 5, 1996, confirming the Inspector issued the EPOs properly; however, it directed the Department of Environment immediately examine the criteria followed when deciding what parties are to be recipients of EPOs and the criteria should be made publicly available. The Minister agreed with the Board's report on December 16, 1996.

Cite as: Sarg Oil Ltd. and Sergius Mankow v. Director of Land Reclamation, Alberta Environmental Protection.

Sarg Oils and Sergius Mankow filed a judicial review in the Court of Queen's Bench on May 12, 1997 and it was heard on October 25, 2004. On July 18, 2005, the Court of Queen's Bench issued a Memorandum of Judgment of the Honourable Mr. Justice J.H. Langston setting aside the Board's Report and Recommendations dated December 5, 1996, and the Order of the Minister dated December 16, 1996, and the matter was referred back to the Board for a new hearing. The Attorney General and the Minister of Environmental Protection filed a Notice of Appeal to the Court of Appeal on October 7, 2005.

At this time, the matter is yet to be heard by the Court of Appeal.

As of March 31, 2006, the appeal is ongoing as the Board is holding the file in abeyance pending the Court of Appeal decision.

**02-079 and 02-080**

**Appellant(s)** – Ms. Katherine McCulloch, Mr. Richard Kelk, Mr. Ross Warner, **Operator** – AAA Cattle Company Ltd., **Location** – near Didsbury, **Type of Appeal** – Report and Recommendations

On November 7 and 8, 2002, the Board received Notices of Appeal from Ms. Katherine McCulloch and Mr. Richard Kelk and Mr. Ross Warner, respectively. The Notices of Appeal were with respect to Licence No. 00188451-00-00 issued under the *Water Act* to AAA Cattle Company Ltd., authorizing the diversion of 126,150 cubic metres of groundwater annually from Production Well Nos. PW5-02, PW6-02, PW7-02 and PW8-02, located in the SW 4-31-27-W4M, near Didsbury, for agricultural purposes

(15,700 head feedlot expansion). The Board held the appeals in abeyance, as the Natural Resources Conservation Board (NRCB) had not yet completed its review of its decision relating to AAA Cattle's operation. The appeals remained in abeyance while the decision of the NRCB was subsequently appealed to the Court of Appeal of Alberta. Once the Court of Appeal process was completed, the Board held a mediation meeting on November 25, 2005, and after productive discussions, the participants reached a resolution. On November 25, 2005, the Board issued a Report and Recommendations proposing that the Minister of Environment accept the resolution and vary the licence and another water licence held by AAA Cattle Ltd. On December 13, 2005, the Minister approved the recommendations.

Cite as: McCulloch et al. v. Director, Southern Region, Regional Services, Alberta Environment re: AAA Cattle Company Ltd. (25 November 2005), Appeal Nos. 02-079 and 02-080-R (A.E.A.B.).

#### **02-131 and 02-140**

**Appellant(s)** – Mr. Allan Blomme, **Operator** – Laurence Marketing Group Ltd. and Mr. Allan Blomme, **Location** – Okotoks, **Type of Appeal** – Active

On December 23, 2002, the Board received a Notice of Appeal from Mr. Allan Blomme appealing Enforcement Order No. 2002-WA-03, issued to the Laurence Marketing Group Ltd. and Mr. Allan Blomme for an alleged contravention of sections 36(1) and 142(1)(h) of the *Water Act* by conducting an activity without an Approval at Plan 8911194, Block 1, (Wilderness Campground) in Okotoks. The Board held a Preliminary Meeting on April 3, 2003, and considered the following questions: 1. What is the proper onus with respect to the hearing of this matter?; 2. What hearing procedures will be used for this hearing, including whether the hearing will be conducted in writing and what deadlines should be set?; 3. Whether Alberta Environment should be required to provide "will say" statements prior to the hearing or as part of the hearing procedure; 4. Whether the Board should dismiss the appeal as requested by Alberta Environment; and 5. Whether to accept the Notice of Appeal filed by Mr. Allan Blomme on behalf of the Laurence Marketing Group. On December 23, 2004, the Appellants requested an abeyance until May 2005 to allow for remedial work to be completed. Due to heavy rainfall, the Appellant was unable to complete remedial work originally outlined. The Department expressed concern with a further abeyance and delay with respect to this matter. On July 12, 2005, the Board decided to proceed with a hearing and requested available dates from the participants. In the meantime, the participants decided to engage in further discussions with the intent of resolving the issue. While discussions continued, the Board granted further abeyances and requested status reports from the participants from May to September 2005. In September 2005, the Board was advised that an action plan had been written; however, there was disagreement with some of the conditions of the plan. The participants agreed to go to mediation instead of proceeding to a formal hearing, to resolve this issue. As a result, the Board held a site visit and mediation meeting on March 29, 2006, in Okotoks, Alberta. After productive discussions, the mediation resulted in an interim resolution.

As of March 31, 2006, this appeal is ongoing as the Board requested the participants provide a status report to the Board by October 6, 2006.

#### **02-152, 03-001-003 and 03-005-006**

**Appellant(s)** – County of Grande Prairie No. 1, Mr. Brock F. Smith, Mr. Ernie Bartsch, Mr. Allan Greber, Mr. David Lowen and Ms. Sidney Hogg, **Operator** – Slave River Exploration Ltd (now Midnight Oil and Gas), **Location** – near Hythe, **Type of Appeal** – Discontinuance of Proceedings



From March 26 to April 23, 2003, the Board received Notices of Appeal from the County of Grande Prairie No. 1, Mr. Brock F. Smith, Mr. Ernie Bartsch, Mr. Allan Greber, Mr. David Lowen, and Ms. Sidney Hogg. The Notices of Appeal were with respect to Licence No. 00192607-00-00 issued under the *Water Act* to Slave River Exploration Ltd. (now Midnight Oil and Gas), authorizing the diversion of 36,500 cubic metres of water annually from the well in LSD 05-30-073-12-W6 for industrial purposes (injection) near Hythe. The Board also received requests for a Stay from the County of Grande Prairie No. 1 and Mr. Smith. The Board scheduled a written submission process to deal with preliminary motions received from Alberta Environment. However, prior to making a determination on the preliminary motions, the Board held a mediation meeting on July 28, 2003, in Grande Prairie in order to assist the participants in reaching a resolution of the appeals. Three of the Appellants reached an agreement with Slave River Exploration Ltd. and Alberta Environment at the mediation meeting. Before finalizing the resolution, the Board had to make a decision with respect to the preliminary motions for the three remaining appeals. The Board began processing the remaining appeals; however, it received a request from the Licence Holder to hold the appeals in abeyance to explore options for an alternative source of water. The Board granted the abeyance and in due course received notice from the Licence Holder that it was relinquishing the Licence. As a result, the Appellants withdrew their appeals and on October 5, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: County of Grande Prairie No. 1 et al. v. Director, Northern Region, Regional Services, Alberta Environment re: Slave River Exploration Ltd. (now Midnight Oil and Gas) (05 October 2005), Appeal Nos. 02-152, 03-001-003 and 03-005-006-DOP (A.E.A.B.).

### 03-010

**Appellant(s)** – Mr. Michael Monner, **Operator** – New Dale Hutterian Brethren, **Location** – near Milo, **Type of Appeal** – As listed below

**Overview:** On June 30, 2003, the Board received a Notice of Appeal and request for a Stay from Mr. Michael Monner with respect to Approval No. 00136848-00-00 issued under the *Water Act* to the New Dale Hutterian Brethren authorizing the operation of drainage works on an unnamed water body, a tributary to Indian Lake, at NW 15-20-21-W4M, 16-20-21-W4M, and 17-20-21-W4M, near Milo. Upon review of Mr. Monner's reasons for a Stay, the Board concluded that no irreparable harm would take place on Mr. Monner's land as a result of activities authorized under the Approval. As a result, the request for a Stay was denied. A mediation meeting was held on August 6, 2003; however, the participants were unsuccessful in reaching an agreement. A hearing was held on January 27, 2004, with the Siksika Nation, Alberta Transportation, and the Vulcan County participating as intervenors. At the hearing, the Siksika Nation raised jurisdictional issues. The Board heard arguments on the substantive issues and set a schedule to receive arguments on the jurisdictional matter.

**(03-010-ID1) Stay Decision:** As the Board had to determine the jurisdictional matter before making its final decision on the substantive matters, both Mr. Monner and the Siksika Nation requested a Stay of the Approval. Based on the submissions and arguments of the parties and intervenors, the Board issued a Decision on November 29, 2004, and determined a Stay was not warranted as there would be no irreparable harm to the applicants and the public interest did not support a Stay.

Cite as: Stay Decision: Monner v. Director, Southern Region, Regional Services, Alberta Environment re: New Dale Hutterian Brethren (29 November 2004), Appeal No. 03-010-ID1 (A.E.A.B.).

**Report and Recommendations:** With regard to the substantive issues, the Board determined that drainage works would not have a detrimental effect on Mr. Monner's property and recommended the

Approval be upheld. As Alberta Transportation and Vulcan County raised the issue of public safety, the Board issued a Decision on October 13, 2004, recommending the Approval be varied by adding two conditions to ensure the roadbed adjacent to the existing culvert at Secondary Highway 842 and the roadbed adjacent to Township Road 202 are not impacted by the operation of the drainage works. Cite as: Monner v. Director, Southern Region, Regional Services, Alberta Environment re: New Dale Hutterian Brethren (13 October 2004), Appeal No. 03-010-R (A.E.A.B.).

**Costs Decision:** Mr. Monner and the Siksika Nation filed costs applications after the Report and Recommendations and the Minister's decision were released. Mr. Monner's request for costs totaling \$5,213.67 was denied, as all of the costs claimed pre-dated the appeal, and therefore, were not costs incurred in the preparation and presentation of his arguments at the hearing. The Siksika Nation's application for costs totaled \$56,434.16, all of which the Board denied. Most of the costs (\$44,815.93) were in relation to the jurisdictional matter, which was withdrawn and not determined by the Board. Although the Board respects the value and found the traditional knowledge interesting, it did not make a significant contribution or materially assist in the Board's decision on the substantive issues. Cite as: Costs Decision: Monner v. Director, Southern Region, Regional Services, Regional Services, Alberta Environment re: New Dale Hutterian Brethren (05 January 2006), Appeal No. 03-010-CD (A.E.A.B.).

#### 03-116 and 03-118-123

**Appellant(s)** – Mountain View Regional Water Services Commission, Mr. Gerald Oxtoby, City of Red Deer, Mr. Terry Little, Mr. Kelly Smith, the Butte Action Committee and Mr. Mike Gallie, **Operator** – Capstone Energy, **Location** – near Red Deer, **Type of Appeal** – As listed below

**Overview:** Between August 15 and September 8, 2003, the Board received Notices of Appeal from the Mountain View Regional Water Services Commission, Mr. Gerald Oxtoby, the City of Red Deer, Mr. Terry Little, Mr. Kelly Smith, the Butte Action Committee, and Mr. Mike Gallie (collectively the "Appellants") with respect to Preliminary Certificate No. 00198509-00-00. The Preliminary Certificate was issued under the *Water Act* to Capstone Energy Ltd. allowing the diversion of 328,500 m<sup>3</sup> of water annually from the Red Deer River by way of an infiltration well in the fluvial gravel formation in SW 4-36-1-W5M near Red Deer for the purpose of oilfield injection.

**Preliminary Motions Decision:** The Board held a preliminary meeting to determine if the parties that filed the appeals were directly affected; to determine the issues to be considered at the hearing of these appeals; to consider an application for interim costs; and to determine whether the appeal filed regarding the Director's decision to reject a statement of concern was properly before the Board. After reviewing the submissions and oral arguments provided by the parties, the Board found the Mountain View Regional Water Services Commission, Mr. Gerald Oxtoby, the City of Red Deer, Mr. Terry Little, and Mr. Kelly Smith directly affected. On February 11, 2004, the Board issued a Decision dismissing Mr. Mike Gallie's appeal as he was found not directly affected, but because he could provide unique, relevant evidence, the Board made him a party to the appeals. The Butte Action Committee withdrew its request to be included as a formal appellant, and instead decided to act as Mr. Gallie's agent. Upon reviewing the submissions of the parties on the issues to be considered at the hearing of these appeals, the Board identified five main areas that the parties wished to address: purpose, protection, volume, immediate neighbours, and policy considerations. With respect to the application for interim costs, based on the information that was before the Board, it decided to not grant interim costs, but instead invited any of the parties to reapply with additional information. (A subsequent application for interim costs was made and granted by the Board.) The appeal of the

Director's decision not to accept a statement of concern did not have to be considered. It was one of Mr. Gallie's appeals, which was dismissed as Mr. Gallie was determined not to be directly affected.

Cite as: Preliminary Motions: Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd. (11 February 2004), Appeal Nos. 03-116 and 03-118-123-ID1 (A.E.A.B.).

**Intervenor Decision:** The Board set a hearing for February 23, 24, and 25, 2004, and in response to the published notice of hearing, it received intervenor requests from the Red Deer Ratepayer Association, Ms. Dorene Rew, the Council of Canadians Red Deer Chapter, the Normandeau Cultural and Natural History Society, and Trout Unlimited. After reviewing the submissions from the parties, the Board issued an Intervenor Decision on January 24, 2005, advising that intervenors could participate in the hearing by providing written submissions and would be able to make a ten minute presentation at the hearing.

Cite as: Intervenor Decision: Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd. (24 January 2005), Appeal Nos. 03-116 and 03-118-121-ID2 (A.E.A.B.).

**Report and Recommendations:** The Appellants argued that fresh water is a scarce resource and it should not be used for oilfield injection, and they believed that once fresh water is injected into the ground in this way, it is gone forever. In considering these appeals, the Board highlighted the importance of fresh water; it is essential for human existence and it is a limited resource. The Board was aware of the importance of the oil and gas industry in Alberta and the work it is undertaking to reduce its use of fresh water in keeping with the principles of sustainable development. The Board balanced the protection of our fresh water supplies with sustaining this element of our economy. In addition to the Appellants, the Board received intervenor requests from the Red Deer County Ratepayer Association, Ms. Dorene Rew, the Council of Canadians Red Deer Chapter, the Normandeau Cultural and Natural History Society, and Trout Unlimited. The Board granted these groups intervenor status, and as a result, they provided evidence at the Hearing. Based on the evidence received the Board issued a Report and Recommendations on April 26, 2004, concluding that the Preliminary Certificate and Proposed Licence should be upheld, subject to a number of changes, including a reduction in the quantity of water and a staggered, shorter term for the proposed licence. The Board encouraged the government to provide direction through an oilfield injection policy that focuses on minimizing the use of fresh water regardless of its source. In the Board's view, if fresh water is going to be used for oilfield injection, the *Water Act* requires that an alternatives analysis be conducted, looking at the technical, economic, and regulatory feasibility of the alternatives and demonstrating that the fresh water will be used not only efficiently, but as the last option considered. The Board recommended the amount of water allocated be reduced to 600 m<sup>3</sup>/day, for a total allocation of 219,000 m<sup>3</sup> annually. To encourage the use of alternate water sources, before the Proposed Licence is issued, the board recommends Capstone provide Alberta Environment with a report detailing a more complete investigation of alternate water sources. Subject to certain conditions detailed in the Report and Recommendations, the amount of water finally allocated in the Proposed Licence may be further decreased if alternate water sources are available. However, as water shortages have occurred in the last number of years, and to protect the aquatic ecosystem, the board recommends an additional safety margin of 10 percent should be added to the minimum residual flow level. It was recommended that a number of the clauses in the Proposed Licence be varied to provide greater certainty, particularly in dealing with complaints. The Board recommended the Minister order that the term of the Proposed Licence be staggered or phased with shorter terms, with the initial term being for one year, and the second term should also be for one year, unless an applicable plan, guideline, or change in regulations provides otherwise. If no applicable plan, guideline, or change in regulations is in place after the second one year term, any subsequent renewals of the Proposed

Licence should not exceed a term of three years. Every renewal of the Proposed Licence should require that an alternatives assessment be conducted based on a list of criteria that should be part of the application process. The Minister approved the Board's recommendations on May 18, 2004.

Cite as: *Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy* (26 April 2004), Appeal Nos. 03-116 and 03-118-121-R (A.E.A.B.).

**Preliminary Motions Decision:** During the hearing process, the Parties raised a number of preliminary issues; 1. the City of Red Deer's request to have the Chair of the Board recused was not granted; 2. the Parties agreed to have written closing submissions only; 3. costs would be dealt with at the close of the Hearing, using the Board's regular process; 4. the request to postpone the Hearing until such time that Mr. Vance Buchwald could attend was denied; 5. Mr. Don Bester and Ms. Judy Winter were not allowed to testify, and the documents Mr. Bester intended to submit, dated November 28, 2001, and September 24, 2003, were not accepted by the Board; 6. the Board agreed with the Landowners that a portion of the interim costs that had been awarded to them to defray costs associated with having Dr. David Schindler appear as a witness for them should be returned to the Certificate Holder; 7. Dr. David Schindler was allowed to present evidence, and the Director and Certificate Holder were provided the opportunity for additional preparation time for cross-examination, but neither party availed themselves of the offer; 8. the City of Red Deer voluntarily withdrew the affidavit of Ms. Leanne Staldeker, as the Director and Certificate Holder agreed with the issue the affidavit intended to represent, specifically that other companies in the area are using alternate technologies; 9. the weight of the intervenor's testimony was dependent on the relevancy and probative value of the evidence; 10. the affidavit of Mr. Mike Gallie was accepted, because unforeseen and uncontrollable circumstances prevented him from submitting the documents on the day specified; 11. Mr. Tom Tang and Mr. Doug Ohrn were requested to appear and testify at the Hearing, because their experience with the South Saskatchewan River Basin Water Management Plan Phase 2 was relevant to the issues identified for the Hearing; 12. the Chief Administrative Officer for the Town of Ponoka appeared at the Hearing to provide sworn evidence and was subject to cross-examination by Parties adverse in interest and the Board; and 13. the Director's closing arguments were accepted and were within the specified page limits, as Appendix A was stricken from the record and Appendix B was already a part of the Record.

Cite as: *Preliminary Motions: Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd.* (16 December 2005), Appeal Nos. 03-116 and 03-118-121-ID3 (A.E.A.B.).

**Interim Costs:** Mr. Gerald Oxtoby, Mr. Terry Little, Mr. Kelly Smith, and Mr. Mike Gallie all filed an application for interim costs in the amount of \$7,854.00. Since the issues to be heard at the hearing were complex, and the costs were reasonable and directly associated with the preparation and presentation of their submissions, the Board granted costs in the amount of \$5,979.00 to be payable to Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith by Capstone Energy Ltd.

Cite as: *Interim Costs Decision: Oxtoby et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy* (29 December 2004), Appeal Nos. 03-118, 120, 121 and 123-IC (A.E.A.B.).

**Costs Decision:** The Board received applications for costs from the City of Red Deer (\$72,242.57) and from Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith (\$28,840.46). After reviewing the applications and the submissions from the other parties, the Board issued a Decision on December 16, 2005, to award costs to the City of Red Deer (\$129.00) and to Mr. Gerald Oxtoby, Mr. Terry Little, and Mr. Kelly Smith (\$14,110.36, less the \$5,850.00 they received as interim costs = \$8,260.36), payable by Capstone Energy Ltd.



Cite as: Costs Decision: Mountain View Regional Water Services Commission et al. v. Director, Central Region, Regional Services, Alberta Environment re: Capstone Energy Ltd. (16 December 2005), Appeal Nos. 03-116 and 03-118-123-CD (A.E.A.B.).

#### **03-124 and 125**

**Appellant(s)** – Imperial Oil Limited and Devon Estates Limited, **Operator** – Imperial Oil Limited and Devon Estates Limited, **Location** – Calgary, **Type of Appeal** – Discontinuance of Proceedings

On September 5, 2003, the Board received Notices of Appeal from Imperial Oil Limited and Devon Estates Limited with respect to Environmental Protection Order Nos. EPO-2003/02-SR and EPO-2003/03-SR issued to Imperial Oil Limited and Devon Estates Limited in relation to the Lynnvie Ridge residential subdivision in Calgary. Imperial Oil, Devon Estates, and Alberta Environment agreed to work to resolve their differences through mediation. The Board selected a mediator and arranged for a series of mediation meetings commencing on October 27, 2003. The Lynnvie Ridge Residents Action Committee and the Calgary Health Region participated in some of the discussions with the mediator. As a result of an agreement reached between Imperial Oil, Devon Estates, and Alberta Environment on March 31, 2005, Alberta Environment cancelled the Environmental Protection Orders and Imperial Oil and Devon Estates withdrew their appeals. The Board issued a Discontinuance of Proceedings on April 6, 2005, and closed its file.

Cite as: Imperial Oil Limited and Devon Estates Limited v. Director, Southern Region, Regional Services, Alberta Environment (6 April 2005), Appeal Nos. 03-124 and 125-DOP (A.E.A.B.).

#### **03-144**

**Appellant(s)** – Castle-Crown Wilderness Coalition, **Operator** – Castle Mountain Resort, **Location** – near Pincher Creek, **Type of Appeal** – Active

On November 13, 2003, the Board received a Notice of Appeal from Mr. Gordon Petersen on behalf of the Castle-Crown Wilderness Coalition with respect to EPEA Amending Approval No. 18777-01-01 issued to Castle Mountain Resort Inc. for the construction, operation and reclamation of a wastewater system for the Castle Mountain Resort. At the time the Appellant filed the Notice of Appeal with the Board, they had also filed a Judicial Review action against Alberta Environment for not conducting an Environmental Impact Assessment (EIA) before it issued the Amending Approval to Castle Mountain Resort. The Appellant requested the Board withhold considering the appeal until after the Judicial Review of the Minister's Decision not to order an EIA had been resolved at Court of Queen's Bench. The Board received a request from Alberta Environment to dismiss the appeal because the Appellant was not directly affected. In response to this request, the Board scheduled a Preliminary Meeting for May 3, 2004, in order to obtain further information. The Board postponed the Preliminary Meeting as the Appellant was not available for the date scheduled. The Judicial Review was heard on November 24, 2003 and the courts issued their reasons on July 2, 2004. The courts determined that the decision of the Director to not order an EIA was quashed and the matter was returned to the Director for determination in accordance with the legislation. Alberta Environment filed an appeal with the Court of Appeal and that matter is outstanding. On May 20 and July 27, 2004, the Appellant wrote to the Board requesting that the Notice of Appeal be amended and that the Board should address whether the approval should be quashed and if an injunction is required, the Board wrote to the parties and received submissions to the effect that the Court of Queen's Bench decision had on the Notice of Appeal. The Appellant requested time to allow the parties an opportunity to determine if the matter could be resolved. The Board granted the extension, however, negotiations broke down and Castle Mountain Resort requested the appeal be dismissed or a hearing be scheduled. Consequently, the

Board proceeded to process the appeal, and requested written submissions on the following questions: whether to dismiss the appeal for being moot, given the decision of the Court of Queens Bench in relation to the Judicial Review filed by the Appellant and given that the relief requested by the Appellant in its Notice of Appeal appeared to have been met by the issuance of that decision; and whether the Appellant should be permitted to amend the Notice of Appeal. The final written submission was received on April 18, 2005. On August 31, 2005, the Board denied Alberta Environment's motions that the Notice of Appeal was moot, denied the application of the Appellant to amend the Notice of Appeal, and it would proceed to hold an oral preliminary meeting on whether the Appellant was directly affected by the Approval. The Board also advised that the preliminary meeting would address what issues should be heard if the Board determines a hearing will be held. The Preliminary Meeting was held on November 29, 2005 in Lethbridge and the Board will issue its decision in due course.

As of March 31, 2006, the appeal is ongoing as the Appellant and Castle Mountain Resorts have reserved their rights to apply for costs. The Board will address the issue of costs after it issues its decision.

#### **03-150, 03-151 and 03-152**

**Appellant(s)** – Mr. Ben Gadd, **Operator** – Cardinal River Coals Ltd., **Location** – near Cadomin, **Type of Appeal** – As listed below

**Overview:** On December 19, 2003, the Board received a Notice of Appeal from Mr. Ben Gadd with respect to *Water Act* Approval No. 00188589-00-00 and EPEA Amending Approval Nos. 11767-01-02 and 46972-00-01 issued to Cardinal River Coals Ltd. for the construction, operation and reclamation of a private haul road near Cadomin.

**Preliminary Motions Decision:** The Board determined that the private haul road was sufficiently different from the transportation corridor assessed in the joint Alberta Energy and Utilities Board and Canadian Environmental Assessment Agency review, and the Board's jurisdiction to hear these appeals was not removed by this joint review process. However, the issues were limited to the differences in the environmental impacts between what was assessed in the joint Alberta Energy and Utilities Board and the Canadian Environmental Assessment Agency review and what now exists as the result of the new design of the haul road. In addition, Mr. Gadd raised a legal issue surrounding the status of the amending approval. On October 8, 2004, the Board issued a Decision outlining the issues to be heard at the hearing: 1. what effect will the new design of the haul road have on the movement and migration of wildlife in the area?; 2. what effect will the new design of the haul road have on public access to the wilderness areas and tourist sites on either side of the haul road?; 3. what effect will the new design of the haul road have on the local watershed?; 4. what effect will the new design of the haul road have on the noise and dust coming from the haul road?; and 5. what is the legal status of the approval given that pre-development activities under the previous approval were to be commenced by December 31, 2001, unless amended?

Cite as: Preliminary Motions: *Gadd v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (8 October 2004), Appeal Nos. 03-150, 03-151 and 03-152-ID1 (A.E.A.B.).

**Intervenor Decision:** In response to the Board's notice of hearing scheduled for September 27 and 28, 2004, the Board received nine intervenor requests, representing 15 individuals and organizations. On October 12, 2004, the Board issued a Decision allowing the participation of Mr. Allan Dane, Ms. Barb Higgins, Ms. Helen Ready, Ms. Janice Melnychuk, Mr. Edd Vass, Ms. Joyce Wilkins, and Mr. Roger



Wilkins, because as residents of Cadomin they could provide evidence that could assist the Board in making its report and recommendations in this matter. Trout Unlimited, Yellowhead County, Alberta Fish and Game Association, United Mine Workers of America, the Town of Hinton, West Yellowhead Community Futures Development Corporation, and the Alberta Council for Sustainable Communities and the Environment were granted the right to participate through written submissions and a five minute oral presentation at the hearing. The intervenor request of Mr. Tom Stang was dismissed, as he does not live in the area.

Cite as: Intervenor Decision: *Gadd v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (12 October 2004), Appeal Nos. 03-150, 03-151, and 03-152-ID2 (A.E.A.B.).

**Judicial Review:** On September 17, 2004, Cardinal River Coals Ltd. commenced an action in the Court of Queen's Bench of Alberta for a judicial review of the Board's decisions regarding the directly affected status of the Appellant, the stay, and the intervenors. Cardinal River Coals only pursued the judicial review of the standing of Mr. Ben Gadd and abandoned the other issues. The judicial review was heard by the Court of Queen's Bench on November 3, 2004. On November 4, 2004, the Court denied Cardinal River Coals' judicial review, finding the Board's determination that the Appellant was directly affected was correct, and in any event, the application by Cardinal River Coals was premature.

**Interim Costs Decision:** The Cadomin residents requested interim costs for the amount of \$2,500.00. After reviewing the submissions for interim costs, the Board issued a Decision on December 21, 2004, denying the request even though the expenses claimed were not unreasonable. The Board advised that the parties appearing before it are responsible for the costs associated with bringing their issues to the forefront, but they were free to reserve their right to submit a final costs application prior to the close of the hearing.

Cite as: Interim Costs Decision: *Gadd v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (21 December 2004), Appeal Nos. 03-150, 03-151, and 03-152-ID3 (A.E.A.B.).

**Report and Recommendations:** Following a review of all of the evidence presented for the hearing of these appeals, the Board determined that some aspects of the new design of the haul road negatively affected Mr. Gadd and the Cadomin residents in terms of their use and enjoyment of the local wilderness areas. However, the Board found there were also environmental benefits to the haul road design relative to the original design, most notably with regard to the reduced impact on the local watershed and the improved control of human access to the wilderness areas to the west of the haul road, which should reduce illegal hunting in the area. Therefore, as long as the potential for wildlife mortality associated with the haul road can be minimized, the haul road should have a net benefit for the environment compared to the original design of the project. Therefore, the Board issued a Report and Recommendations to the Minister of Environment for his approval on February 24, 2005, recommending the *Water Act* Approval be confirmed and the *Environmental Protection and Enhancement Act* Amending Approvals be confirmed subject to a number of variations. Most of these variations relate to providing additional protection for wildlife. The Minister approved the Report and Recommendations on April 8, 2005.

Cite as: *Gadd v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (24 February 2005), Appeal Nos. 03-150, 151 and 152-R (A.E.A.B.).

**Costs Decision:** The Board received costs applications from Mr. Gadd (\$71,364.26), Cardinal River Coals (\$1.00), and the Cadomin Residents (\$5,935.74) who intervened in the hearing. The Board issued a Costs Decision on December 16, 2005, denying costs to the Cadomin Residents, as they did not reserve their right to ask for costs prior to the end of the hearing. Costs were not awarded to Cardinal River Coals Ltd. as the costs they were seeking were punitive in nature. The Board awarded

Mr. Gadd costs for legal fees (\$10,165.00) and for witnesses that appeared on his behalf (\$3,838.96) to be paid by Cardinal River Coals Ltd.

Cite as: Costs Decision: Gadd v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd. (16 December 2005), Appeal Nos. 03-150, 151 and 152-CD (A.E.A.B.).

**04-009, 04-011, and 04-012**

**Appellant(s)** – Mr. Mike Northcott, **Operator** – Lafarge Canada Inc., **Location** – near Calihoo, **Type of Appeal** – As listed below

On May 28, 2004, the Board received three Notices of Appeal and requests for a stay from Mr. Mike Northcott with respect to Licence Nos. 00192603-00-00 and 00206791-00-00 issued under the *Water Act*, and Amending Approval No. 76893-00-01 issued under EPEA to Lafarge Canada Inc. The Licences and Amending Approval are in relation to a sand and gravel operation, commonly known as the Onoway Wash Plant, near Calihoo. The wash plant has existed since the mid-1950s and was originally authorized by way of a water licence issued in 1957, which Lafarge still holds today. The wash plant is located next to and uses water from Kilini Creek, a tributary of the Sturgeon River, which is in the North Saskatchewan River Basin.

**Report and Recommendations:** The Board held a hearing on November 5, 2004, in Edmonton. At the hearing, Mr. Northcott expressed concern about his water well. However, the evidence before the Board indicated no connection between the wash plant and his well. Mr. Northcott also expressed concern with the design of the wash plant. He wanted the on-stream dam and impoundment removed and the creek returned to a “natural” condition. The Board concluded the design of the wash plant was not before the Board since it is an existing facility, licenced in 1957. Even if the Board had recommended canceling the new Licences (which it did not), it would do nothing to address these concerns and it would not return the creek to a “natural” condition. The environmental impacts are not appreciably different with or without the new Licences. The wash plant used the same water repeatedly; the new Licences were not for new water, but merely permission to use the same water over again a few more times. Now that the wash plant has been properly regulated and monitored with the new Licences and new Amending Approval, the Board expected the environmental concerns, including those of Mr. Northcott, would be better addressed. Mr. Northcott also raised concerns regarding the wording of the Licences and argued for additional monitoring and reporting conditions. The Board accepted a number of Mr. Northcott’s arguments on those points. Therefore, on January 6, 2005, the Board issued a Report and Recommendations recommending to the Minister of Environment that the Licences and Amending Approval be confirmed, subject to a number of variations. The Board recommended that a number of conditions be reworded and a number of monitoring and reporting conditions be added. In particular, the Board recommended requiring Lafarge to prepare and submit a Summary Water Balance Report annually. The report should help Alberta Environment ensure that the wash plant remains in compliance with its Licences and should assist Lafarge in addressing the concerns of Mr. Northcott and the local community. The Minister approved the recommendations on February 28, 2005.

Cite as: Northcott v. Director, Northern Region, Regional Services, Alberta Environment re: Lafarge Canada Inc. (6 January 2005), Appeal Nos. 04-009, 04-011 and 04-012-R (A.E.A.B.).

**Stay Decision:** On reviewing the submissions provided by the parties regarding the Stay application, the Board issued a Decision on January 11, 2005, advising that a Stay was not warranted, as there would be no irreparable harm to Mr. Northcott in the time the Board would require to hear the appeal, and the public interest did not support the granting of a Stay. Therefore, on January 11, 2005, the Board issued a Decision denying the stay request.

Cite as: Stay Decision: Northcott v. Director, Northern Region, Regional Services, Alberta Environment re: Lafarge Canada Inc. (11 January 2005), Appeal Nos. 04-009, 04-012-ID1 (A.E.A.B.).

**Costs Decision:** Before the close of the hearing on November 5, 2004, Mr. Northcott advised that he may wish to make an application for costs. Lafarge and Alberta Environment indicated they did not intend to make an application for costs. After the release of the Minister's decision, Mr. Northcott submitted a request for costs for the total sum of \$12,337.38. The Board determined legal counsel for Mr. Northcott did assist the Board in its process, and on December 23, 2005, the Board issued a Decision to award costs in the amount of \$5,071.17 to Mr. Northcott to be paid by Lafarge.

Cite as: Costs Decision: Northcott v. Director, Northern Region, Regional Services, Alberta Environment re: Lafarge Canada Inc. (23 December 2005), Appeal Nos. 04-009, 011 and 012-CD (A.E.A.B.).

#### **04-024, 04-026-030 and 04-035-040**

**Appellant(s)** – Mr. Willem and Ms. Mieke Spaans, Mr. Andre and Ms. Trish Lema, Mr. Glen Blaylock, Mr. Leo and Ms. Valerie Belanger, Mr. Robert and Ms. Kathryn Lema, and Mr. Gary and Ms. Doris Labrecque, **Operator** – Yellowhead Aggregates and Lafarge Canada Inc., **Location** – near St. Albert, **Type of Appeal** – As listed below.

**Overview:** On June 23 and 24, 2004, the Board received Notices of Appeal and requests for a Stay from Mr. Willem and Ms. Mieke Spaans, Mr. Andre and Ms. Trish Lema, Mr. Glen Blaylock, Mr. Leo and Ms. Valerie Belanger, Mr. Robert and Ms. Kathryn Lema, and Mr. Gary and Ms. Doris Labrecque with respect to EPEA Amending Approval No. 15125-01-01 issued to Lafarge Canada Inc. for the opening up, operation, and reclamation of a pit on SW 16-54-26-W4M, and Water Act Amending Approval No. 0023878-00-02 issued to Yellowhead Aggregates for the diversion of water at SW 16-54-26-W4M near St. Albert.

**Stay Decision:** The Board received submissions regarding the Appellants request for a Stay and the directly affected status of the Appellants. On January 11, 2005, the Board issued a Decision advising the Appellants are directly affected as they live within one kilometre of the project site. However, the Board denied the Stay request as the Appellants would not suffer irreparable harm by the companies operating under the terms and conditions of the approvals in the time required to hear the appeals. As the balance of convenience did not favour one party over the other, the status quo remained in effect and the Stay was denied.

Cite as: Stay Decision: Spaans et al. v. Director, Northern Region, Regional Services, Alberta Environment re: Yellowhead Aggregates and Lafarge Canada Inc. (11 January 2005), Appeal Nos. 04-024, 04-026-030, and 04-035-040-ID1 (A.E.A.B.).

**Discontinuance of Proceedings:** The Board advised the parties that the appeals may be successfully mediated and requested they provide available dates for mediation. The Board held mediation meetings in Edmonton on November 19, 2004 and April 29, 2005. Following successful discussions at the April 29, 2005 mediation meeting, the Appellants withdrew their appeals and on May 3, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Spaans et al. v. Director, Northern Region, Regional Services, Alberta Environment re: Yellowhead Aggregates and Lafarge Canada Inc. (3 May 2005), Appeal Nos. 04-024, 04-026-030 and 04-035-040-DOP (A.E.A.B.).

#### **04-047**

**Appellant(s)** – Mr. Myron and Ms. Tracey Fawcett, **Operator** – Calpine Canada Resources Company (now Viking Energy Trust), **Location** – near Consort, **Type of Appeal** – Discontinuance of Proceedings

On July 21, 2004, the Board received a Notice of Appeal from Myron and Tracey Fawcett, the landowners, appealing EPEA Reclamation Certificate No. 00190505-00-00 issued to Calpine Canada Resources Company (now Viking Energy Trust) for the surface of land held by Calpine Canada Resources Company within SE 13-035-04-W4M in connection with or incidental to the Encal Provost 7-13-35-7 well near Consort. The Board held a mediation meeting in Consort on April 21, 2005, following which an agreement was reached by the parties. As a result, the Appellants withdrew their appeal and on May 3, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: *Fawcett v. Inspector, Southern Region, Regional Services, Alberta Environment re: Calpine Canada Resources Company (now Viking Energy Trust)* (3 May 2005), Appeal No. 04-047-DOP (A.E.A.B.).

#### **04-053 and 04-054**

**Appellant(s)** – Ms. Barbara A. Higgins, **Operator** – Cardinal River Coals Ltd., **Location** – near Hinton, **Type of Appeal** – Active

**Overview:** On September 3, 2004, the Board received a Notice of Appeal from Ms. Barbara A. Higgins with respect to *Water Act* Approval No. 00205213 issued to Cardinal River Coals Ltd. for the placement, construction, operation, maintenance, and removal of works within the fence line of the Cheviot Creek Pit for the purpose of the diversion and management of water, construction of rock drains and sedimentation facilities, and the development of an end-pit lake and fisheries enhancement ponds on a tributary of the McLeod River, near Hinton.

**(04-053-D) Decision:** The Appellant filed the appeal past the 7-day time frame and the Board requested that Ms. Higgins provide reasons why an extension should be granted. After reviewing the response, the Board determined that no special circumstances existed to warrant an extension and on October 27, 2004 issued a Decision dismissing the appeal.

Cite as: *Higgins v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (27 October 2004), Appeal No. 04-053-D (A.E.A.B.).

**(04-053-RD) Reconsideration Decision:** Ms. Higgins filed a reconsideration request of the Board's decision. After reviewing the parties' submissions regarding the request, the Board issued a Decision on January 11, 2005, which determined that she did not provide any new evidence that was not available at the time of the original decision or identified any error in law. As a result, the Board denied the Appellant's reconsideration request.

Cite as: *Reconsideration Decision: Higgins v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd.* (11 January 2005), Appeal No. 04-053-RD (A.E.A.B.).

**(04-054-D) Decision:** The Director raised a preliminary motion that Ms. Higgins did not file a valid Statement of Concern, a prerequisite to filing a valid Notice of Appeal, and therefore, the appeal should be dismissed. The Director originally rejected the Statement of Concern on the basis that Ms. Higgins did not live or own property in the area of the coal mine. In her Statement of Concern, Ms. Higgins did mention she had a home in the area, and this was confirmed in her submissions. She believed she was directly affected by the project. The Director argued the information provided by Ms. Higgins was insufficient to determine her concerns and how she was affected by the proposed project. After reviewing the submissions and the relevant sections of the Director's record, the Board issued a Decision on August 26, 2005, determining that the information provided in Ms. Higgins'



letters to the Director was sufficient to fulfill the requirements of a Statement of Concern for the purposes of filing an appeal. The Board made no determination as to whether Ms. Higgins was directly affected by the project, but the Director's motion to dismiss the appeal on the basis of not filing a valid Statement of Concern was denied.

Cite as: Higgins v. Director, Central Region, Regional Services, Alberta Environment re: Cardinal River Coals Ltd. (26 August 2005), Appeal No. 04-054-D (A.E.A.B.).

In response to correspondence from the Department of Environment, the Board set up a written submission process to address the motion of Ms. Higgins' directly affected status. The Board also decided to deal with the issue of whether the matter was subject to a hearing or review under any act administered by the Alberta Energy and Utilities Board or the *Canadian Environmental Assessment Act*. By March 20, 2006, the Board received all written submissions and began its review.

As of March 31, 2006, the appeal is ongoing as the Board is reviewing written submissions.

#### **04-057**

**Appellant(s)** – Byram Industrial Services Ltd., **Operator** – Wasteworks Inc., **Location** – near Carrot Creek, **Type of Appeal** – Decision

On October 21, 2004, the Board received a Notice of Appeal from Byram Industrial Services Ltd. appealing EPEA Approval No. 203668-00-00 issued to Wasteworks Inc. The Approval authorized the construction, operation, and reclamation of a facility consisting of a landfill, where more than 10,000 tonnes of waste annually is disposed of and a fixed facility where waste is treated by biological processes, near Carrot Creek. The facility is commonly known as the Tower Road Waste Management Facility. The Board scheduled a Preliminary Meeting to deal with the following preliminary issues: 1. the directly affected status of Byram Industrial Services Ltd.; 2. the effect of the Director not accepting the Statement of Concern of Byram Industrial Services Ltd.; 3. the issues to be considered at a hearing, should one be held; and 4. mootness, in relation to some or all of the grounds for appeal. The Board determined Byram Industrial Services Ltd. did not provide sufficient evidence to support its argument that being economically impacted would result in an environmental effect. Therefore, on April 28, 2005, the Board issued a Decision dismissing the appeal, as the appellant was not directly affected.

Cite as: Byram Industrial Services Ltd. v. Director, Central Region, Regional Services, Alberta Environment re: Wasteworks Inc. (28 April 2005), Appeal No. 04-057-D (A.E.A.B.).

#### **04-084**

**Appellant(s)** – Whitecourt Power Limited Partnership, **Operator** – Whitecourt Power Limited Partnership, **Location** – Woodlands County, **Type of Appeal** – Discontinuance of Proceedings

On January 27, 2005, the Board received a Notice of Appeal from Whitecourt Power Limited Partnership with respect to EPEA Approval No. 291-01-00 issued to Whitecourt Power Limited Partnership authorizing the construction, operation and reclamation of the Whitecourt Thermal Electric Power Plant in Woodlands County. While the Board was processing the appeal, Alberta Environment and Whitecourt Power Limited Partnership requested a one-year abeyance of the appeal. The Board held a conference call to discuss the matter with the parties, and as a result, the Appellant withdrew the appeal. On May 6, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Whitecourt Power Limited Partnerships v. Director, Northern Region, Regional Services, Alberta Environment re: Whitecourt Power Limited Partnership (6 May 2005), Appeal No. 04-084-DOP (A.E.A.B.).

**04-085**

**Appellant(s)** – Mr. Irvin R. Macklin, **Operator** – Talisman Energy Inc., **Location** – near Wanham, **Type of Appeal** – Discontinuance of Proceedings

On February 1, 2005, the Board received a Notice of Appeal from Mr. Irvin R. Macklin with respect to EPEA Reclamation Certificate No. 00193575-00-00 issued to Talisman Energy Inc. for the Talisman Belloy 5-31-78-2 well near Wanham. The Board held a mediation meeting on May 19, 2005, in Spirit River. At the mediation an agreement was reached by all the participants, and the Appellant withdrew his appeal. On May 20, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Macklin v. Inspector, Northern Region, Regional Services, Alberta Environment re: Talisman Energy Inc. (20 May 2005), Appeal No. 04-085-DOP (A.E.A.B.).

**04-090**

**Appellant(s)** – Mr. Ted Ganske, **Operator** – CCS Inc., **Location** – near Bonnyville, **Type of Appeal** – Report and Recommendations

On February 10, 2005, the Board received a Notice of Appeal from Mr. Ted Ganske with respect to EPEA Approval No. 204916-00-00 issued to CCS Inc. authorizing the construction, operation, and reclamation of the Bonnyville Waste Management Facility, a Class II Industrial Landfill, located at NE 9-61-3-W4M, near Bonnyville. The Board held a mediation meeting on April 27, 2005, in Bonnyville; however a resolution was not reached. Therefore, a hearing took place on July 21 and August 10, 2005, where Mr. Ganske expressed concern that the landfill would result in the contamination of groundwater and deterioration of air quality at his residence, negatively affecting his family's health. Based on the information before the Board, which included that there was a restriction on the type of waste that would be accepted, and that the processing of waste was prohibited, the Board concluded that the landfill would not pose a risk to the air quality at Mr. Ganske's residence. The Board also concluded that the hydrogeological assessment on which the selection of the site was based and the design of the landfill met or exceeded Alberta Environment's standards for landfills. These standards are designed to protect the environment and the public's health and safety. Accordingly, the Board determined that the landfill would pose no health risks to the Ganske family. Mr. Ganske also expressed concern with the landfill's surface water management, and that alterations to surface water drainage at the landfill would result in flooding on his land and contaminated surface water entering onto his land and into the creek and the Beaver River. The Board was satisfied that the design of the surface water management system, including a leachate collection system and a stormwater collection pond with prerelease sampling, adequately addressed these concerns. Mr. Ganske also raised concerns about the effect of the landfill on wildlife in the area. The Board concluded the landfill site is not part of a significant wildlife corridor in that it is not unique within the region and there are several other corridors in the area available to wildlife. Mr. Ganske was concerned that noise from the operation of the landfill would negatively affect his quality of life. The Board, based on CCS Inc.'s extensive operating experience of similar landfills, concluded that the landfill would likely have minimal noise impacts on Mr. Ganske. The Board noted that CCS Inc. has a formal complaint process in place should issues arise. On September 9, 2005, the Board issued a Report and Recommendations recommending the Approval be confirmed subject to several amendments. Many of these



amendments were agreed to by Alberta Environment and CCS Inc. which recommended clarification of several conditions and the addition of a number of conditions related to the landfill's construction and operation. To respond to Mr. Ganske's concerns about groundwater, the Board recommended the Approval be amended to include monitoring of his water well and a water well belonging to the nearby Cold Lake First Nation, if the respective landowners agree to provide access. The Board also recommended Mr. Ganske and the Cold Lake First Nation be provided with the results of the groundwater monitoring programs undertaken at the landfill and that CCS Inc. be required to submit an investigative plan to Alberta Environment if a complaint related to the interference with a domestic water source is received. Mr. Ganske expressed a lack of trust in the Approval's monitoring conditions, stating that such monitoring is susceptible to tampering. The Board accepts the rationale for Alberta Environment's self-monitoring approach. Moreover, there was no evidence presented to cause the Board to doubt the integrity of CCS Inc. To address the type of concern raised by Mr. Ganske, the Approval already contains a condition requiring an environmental compliance audit to be conducted by an independent third party every three years. To improve this condition, the Board recommended the Approval be amended to require Alberta Environment's approval of the choice of a third party auditor. The Minister agreed with the Board's recommendations and issued a Ministerial Order on October 11, 2005, reflecting the recommendations.

Cite as: Ganske v. Director, Northern Region, Regional Services, Alberta Environment re: CCS Inc. (9 September 2005), Appeal No. 04-090-R (A.E.A.B.).

After the Report and Recommendation was issued, the Appellant submitted a costs application. On November 23, 2005, the Board received the final submission with respect to the application.

As of March 31, 2006, the appeal is ongoing as the Board is in the process of rendering a decision with respect to costs.

#### **04-091**

**Appellant(s)** – Ms. Anne Wasson, **Operator** – McDonald Subdivision Development Phase III, **Location** – County of Bighorn #8, **Type of Appeal** – Active

On February 10, 2005, the Board received a Notice of Appeal from Ms. Anne Wasson with respect to Alberta Environment's decision to refuse to issue a Water Management Order at the request of the Appellant for the McDonald Subdivision Development Phase III in the County of Bighorn #8. The matter concerns the impact of the subdivision on the existing Licence No. 17157 held by the Appellant. The subdivision, consisting of more than 25 lots in less than one half of a quarter section, is upstream from the Appellant's source of water. The Appellant is concerned that the final stage and the cumulative effect of the subdivision will interfere with and adversely impact the priority of her licence. Alberta Environment requested this appeal be dismissed for not being properly before the Board as there is no statutory appeal right for a refusal to issue a Water Management Order and the relief requested by the Appellant is not within the jurisdiction of the Board. The Board scheduled a submission process and received the final submission on April 21, 2005. The Board advised the participants on June 7, 2005, that it had decided to dismiss the appeal for lack of jurisdiction.

As of March 31, 2006, the appeal is ongoing as the Board is in the process of issuing its reasons for its decision.

#### **04-122**

**Appellant(s)** – Canadian Natural Resources Limited, **Operator** – Canadian Natural Resources Limited, **Location** – near Lindbergh, **Type of Appeal** – Discontinuance of Proceedings

On February 24, 2005, the Board received a Notice of Appeal from Canadian Natural Resources Limited, appealing Alberta Environment's decision to refuse to issue a reclamation certificate to Canadian Natural Resources Limited for the CNRL et al Lindbergh 2-8-57-7-W4M well near Lindbergh. The Board held a mediation meeting in Elk Point on May 4, 2005. Following productive and detailed discussions at the mediation meeting, the Appellant withdrew the appeal. On May 6, 2005, the Board issued a Discontinuance of Proceedings and closed its files.

Cite as: Canadian Natural Resources Limited v. Director, Northern Region, Regional Services, Alberta Environment (6 May 2005), Appeal No. 04-122-DOP (A.E.A.B.).

#### **04-123 and 04-124**

**Appellant(s)** – Tartan Energy Inc., **Operator** – Tartan Energy Inc., **Location** – Sturgeon County, **Type of Appeal** – As listed below

**Overview:** On March 23, 2005, the Board received Notices of Appeal and a request for a Stay from Tartan Energy Inc. with respect to two EPEA Environmental Protection Orders, No. EPO-2005/03-NR and EPO-2005/04-NR, issued to Tartan Energy Inc. for seven well sites in Sturgeon County, Alberta.

**Preliminary Motions Decision:** On January 27, 2005, the Board held a preliminary meeting to hear oral arguments on the following issues: 1. the party status of Ms. Vivian Visscher, Mr. Brian Cornelis, Mr. John Peet, Mr. Robert Halvorson, and the Orphan Well Association, in these appeals; 2. the appellant's request for a stay; 3. the issues to be dealt with at a future hearing of these appeals; and 4. whether the hearing of these appeals should be held via written submission and agreed statement of facts. The Board issued a decision regarding the preliminary motions on June 30, 2005, advising that Mr. and Ms. Visscher and Visscher Farms Ltd., Mr. Cornelis, Mr. Peet, and Mr. Halvorson, as landowners of the affected lands, were full parties to the appeals. The Board also determined the Orphan Well Association was a full party to the appeal on the basis that it was liable for the off-site remediation associated with three of the wells that are the subject of one of the EPOs. The Board denied the Stay request with respect to one of the EPOs (EPO 2005/03-NR) as the balance of convenience and the public interest favoured denying the request. The Board granted the Stay request with respect to the other EPO (EPO 2005/04-NR) until June 1, 2005, as the balance of convenience and public interest favoured granting the request. The Board reserved the right to extend the Stay at that time. The issues that will be heard by the Board at an oral hearing will be: 1. Were the Environmental Protection Orders properly issued? and 2. Was rescission an available remedy in these circumstances to nullify the regulatory authority underlying the Environmental Protection Orders?

Cite as: Preliminary Motions: Tartan Energy Inc. v. Director, Central Region, Regional Services, Alberta Environment re: Tartan Energy Inc. (30 June 2005), Appeal Nos. 04-123 & 124-ID1 (A.E.A.B.).

**Report and Recommendations:** On May 31, 2005, a mediation meeting was held with respect to five of the seven wells, following which an agreement was reached by the parties with respect to EPO 2005/03-NR (04-123). The Board issued a Report and Recommendations on June 13, 2005, recommending the Minister of Environment accept the agreement and vary the Environmental Protection Order. On June 30, 2005, the Minister approved the recommendation.

Cite as: Tartan Energy Inc. v. Director, Northern Region, Regional Services, Alberta Environment (13 June 2005), Appeal No. 04-123-R (A.E.A.B.).

**Discontinuance of Proceedings:** On May 31, 2005, an Interim Agreement was reached with respect to EPO No. 2005/04-NR (04-124). The Appellant and Director agreed to continue discussions and provide a status report to the Board by September 14, 2005. The Board received letters from the Appellant requesting an extension of time, which was granted. On February 28, 2006, the Board received a letter from the Appellant withdrawing its appeal for EPO 2005/04-NR. On March 10, 2006, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Tartan Energy Inc. v. Director, Northern Region, Regional Services, Alberta Environment (10 March 2006), Appeal No. 04-124-DOP (A.E.A.B.).

#### **05-001 and 05-003**

**Appellant(s)** – Mr. Darren and Ms. Toni Daniel and Mr. Ron and Ms. Judy Plett, **Operator** – Sanjo and Benchmark Developments Inc., **Location** – near Lloydminster, **Type of Appeal** – Discontinuance of Proceedings

On April 14 and 15, 2005, the Board received Notices of Appeal from Mr. Darren and Ms. Toni Daniel and Mr. Ron and Ms. Judy Plett, respectively, regarding *Water Act* Approval No. 00197206-00-00 issued to Sanjo and Benchmark Developments Inc. The Approval authorized the construction, operation and management of a stormwater management facility located within NE 21-050-01-W4M for the purpose of collecting and draining stormwater to an unnamed tributary of Big Gully Creek, near Lloydminster. The Board held a mediation meeting on September 23, 2005, in Lloydminster, and as a result of productive discussions, a resolution was reached, and the Appellants withdrew their appeals. On October 5, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Daniel et al. v. Director, Central Region, Regional Services, Alberta Environment re: Sanjo and Benchmark Developments Inc. (05 October 2005), Appeal No. 05-001 and 05-003-DOP (A.E.A.B.).

#### **05-002**

**Appellant(s)** – Deer Creek Energy Limited, **Operator** – Deer Creek Energy Limited, **Location** – County of Vermillion River, **Type of Appeal** – Discontinuance of Proceedings

On April 21, 2005, the Board received a Notice of Appeal from Deer Creek Energy Limited with respect to Alberta Environment's refusal to issue a reclamation certificate to Deer Creek Energy Limited for the Medcon Joffre Lloyd 8A-14-51-1 W4M well in the County of Vermillion River. The Board held a mediation meeting on June 21, 2005, in Lloydminster. Following discussions at the mediation meeting, the Appellant stated he would advise the Board if he wished to continue with his appeal. On June 23, 2005, the Board was advised that the Appellant would not be proceeding with his appeal. As a result, the Board issued a Discontinuance of Proceedings on June 29, 2005, and closed its file.

Cite as: Deer Creek Energy Limited v. Director, Central Region, Regional Services, Alberta Environment (29 June 2005), Appeal No. 05-002-DOP (A.E.A.B.).

#### **05-004**

**Appellant(s)** – Buffalo River Dene Nation and the Metis Nation Clearwater Clear Lake Region, **Operator** – Buffalo River Dene Nation and the Metis Nation-Clearwater Lake Region, **Location** – near Conklin, **Type of Appeal** – Discontinuance of Proceedings

On May 16, 2005, the Board received a Notice of Appeal from the Buffalo River Dene Nation and the Metis Nation Clearwater Clear Lake Region with respect to a decision by the Alberta Energy and Utilities Board which reviewed requests by the Appellants on Approval No. 9426 issued to Devon

Canada Corporation for Devon's Jackfish SAGD project, original application No. 1321211. The Board advised the Appellants that the initial view was that the appeal did not fall within the jurisdiction of the Board, but the participants were provided with an opportunity to supply additional comments. As a result, the Appellants withdrew their appeal, and on May 24, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Buffalo River Dene Nation and Metis Nation Clearwater Clear Lake Region re: Devon Canada Corporation (24 May 2005), Appeal No. 05-004-DOP (A.E.A.B.).

#### **05-005**

**Appellant(s)** – Husky Oil Operations Limited, **Operator** – Husky Oil Operations Limited, **Location** – near Lloydminster, **Type of Appeal** – Discontinuance of Proceedings

On May 20, 2005, the Board received a Notice of Appeal from Husky Oil Operations Limited with respect to Alberta Environment refusing to issue a reclamation certificate to Husky Oil Limited for the Husky Blackfoot Lloyd 14A-25-49-2-W4 well near Lloydminster, Alberta. The Board held a mediation meeting in Edmonton on July 14, 2005. As a result of the mediation meeting, a resolution was reached between the parties and the Appellant withdrew the appeal. On July 15, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Husky Oil Operations Limited v. Director, Central Region, Regional Services, Alberta Environment (15 July 2005), Appeal No. 05-005-DOP (A.E.A.B.).

#### **05-006**

**Appellant(s)** – Walter Construction Corporation, **Operator** – Walter Construction Corporation, **Location** – near Pincher Creek, **Type of Appeal** – Active

On June 8, 2005, the Board received a Notice of Appeal from Mr. Kerry R. Powell on behalf of Walter Construction Corporation with respect to EPEA Environmental Protection Order No. EPO 2005/11-SR issued to Walter Construction for the reclamation of a sand and gravel pit within SE ¼ 10-7-29-W4M near Pincher Creek. The Board scheduled a hearing for November 30, 2005, in Lethbridge; however, it was adjourned because the participants were in ongoing discussions with the hope of resolving the matter. The Participants reached an agreement for work to be completed with respect to this appeal in 2006.

As of March 31, 2006, the appeal is ongoing as the work is completed. The participants are to submit a status report to the Board outlining their progress by July 31, 2006.

#### **05-007**

**Appellant(s)** – Mesken Contracting Limited, **Operator** – Mesken Contracting Limited, **Location** – Wheatland County, **Type of Appeal** – Discontinuance of Proceedings

On June 23, 2005, the Board received a Notice of Appeal from Mesken Contracting Limited with respect to Administrative Penalty No. WA-05/01-AP-SR-05/01 issued to Mesken Contracting Limited. The Administrative Penalty was issued for failing to ensure that a copy of the licence authorizing the diversion of water from the Bow River at NW ¼ 33-021-25-W4M in Wheatland County was kept in the vehicle transporting the water, and for failing to submit the monitoring data to the Director within 30 days of the completion of the water diversion. The Board began processing the appeal; however,

during that time, the Appellant withdrew the appeal. As a result, the Board issued a Discontinuance of Proceedings on August 15, 2005, and closed its file.

Cite as: Mesken Contracting Limited v. Director, Southern Region, Regional Services, Alberta Environment (15 August 2005), Appeal No. 05-007-DOP (A.E.A.B.).

#### 05-008

**Appellant(s)** – Mr. Rodney Sargent, **Operator** – PrimeWest Energy Inc., **Location** – near Mirror, **Type of Appeal** – Discontinuance of Proceedings

On July 8, 2005, the Board received a Notice of Appeal from a landowner, Mr. Rodney Sargent, with respect to Reclamation Certificate No. 00208740-00-00 issued to PrimeWest Energy Inc. for the Gardex Nevis 10-34-40-23 W4 well near Mirror. The Board held a mediation meeting in Lacombe on September 15, 2005, and following productive discussions, a resolution was reached and the Appellant withdrew his appeal. On September 16, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Sargent v. Inspector, Central Region, Regional Services, Alberta Environment re: PrimeWest Energy Inc. (16 September 2005), Appeal No. 05-008-DOP (A.E.A.B.).

#### 05-009

**Appellant(s)** – Mr. Wolfgang Artin Dittrich, **Operator** – Mr. Wolfgang Artin Dittrich, **Location** – County of Grande Prairie, **Type of Appeal** – Discontinuance of Proceedings

On July 20, 2005, the Board received a Notice of Appeal with respect to Enforcement Order No. WA-EO-2005/03-NR issued under the *Water Act* to Mr. Wolfgang Artin Dittrich for the removal of an obstruction from a water body, in the County of Grande Prairie. The Board held a mediation in Grande Prairie and after productive discussions, an agreement was reached between the participants, and Mr. Dittrich withdrew his appeal. On November 25, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Dittrich v. Director, Northern Region, Regional Services, Alberta Environment (25 November 2005), Appeal No. 05-009-DOP (A.E.A.B.).

#### 05-010 and 05-012

**Appellant(s)** – Ms. Elin H. Barlem, Ms. Linda Covey, and Mr. Ray Cerniuk, **Operator** – Mr. Hal Willis, **Location** – Innisfail, **Type of Appeal** – Decision

On August 2, 2005, the Board received Notices of Appeal from Ms. Elin Barlem, Ms. Linda Covey and Mr. Ray Cerniuk with respect to Amending Approval No. 00193447-00-02 issued under the *Water Act* to Mr. Hal Willis. The Amending Approval amended the expiry date of Approval No. 00193447-00-00 to October 31, 2005, and updated the operator's address. The original Approval authorized the placement of clean fill on property adjoining Dodds Lake at SW 28-35-28-W4M in Innisfail. The Appellants also requested a Stay of the Amending Approval and a reconsideration of the Board's Report and Recommendations (03-017, 024-026, 031, 033 and 03-037-R) issued in response to the appeals of the original Approval. The Board dismissed the appeals of the Amending Approval, as the Appellants did not provide sufficient reasons to demonstrate that section 115(2)(c)(iii) of the *Water Act* should not apply in this circumstance. Section 115(2)(c)(iii) clearly states there is no right of appeal when the Director amends an approval by extending the expiry date. As there was no valid appeal before the Board, a Decision was issued on December 14, 2005, advising the Stay request was



denied. The Board also denied the reconsideration request of its Report and Recommendations issued May 12, 2004, as the Appellants did not demonstrate there were exceptional circumstances that would justify the Board reconsidering its recommendations and introducing unwarranted uncertainty into its decision-making process.

Cite as: Barlem et al. v. Director, Central Region, Regional Services, Alberta Environment re: Hal Willis (14 December 2005), Appeal Nos. 05-010-012-D (A.E.A.B.).

#### **05-013**

**Appellant(s)** – Husky Oil Operations Limited, **Operator** – Husky Oil Operations Limited, **Location** – near Jenner, **Type of Appeal** – Discontinuance of Proceedings

On August 26, 2005, the Board received a Notice of Appeal from Husky Oil Operations with respect to a refusal to issue a reclamation certificate to Husky Oil for the Renaissance 16C Suffield 16-14-20-8 well at Surface Point in LSD 1-23-20-8-W4M, near Jenner. The Board held a mediation meeting on November 7, 2005, and after productive discussions, an agreement was reached and Husky Oil withdrew the appeal. Therefore, on November 25, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Husky Oil Operations Limited v. Director, Southern Region, Regional Services, Alberta Environment (25 November 2005), Appeal No. 05-013-DOP (A.E.A.B.).

#### **05-014, 05-019, 05-021, and 05-041**

**Appellant(s)** – Mr. Dennis and Ms. Linda Mercer, Mr. Hans and Ms. Katherine Weinacker, Mr. Lyle A. Braunworth, Mr. Donald and Ms. Bette Green, Mr. Ron and Ms. Lorraine Gorsche, Mr. Keith Spackman, Ms. Helen Adams, and Mr. Bruce and Ms. Carol Miles, **Operator** – Town of High River, **Location** – Town of High River, **Type of Appeal** – Active

Between August 30 and October 18, 2005, the Board received eight Notices of Appeal with respect to Approval No. 00209177-00-00 issued under the *Water Act* to the Town of High River. The Approval authorized the construction of the Golf Course Dyke and Baker Creek Dyke on the floodplain of the Highwood River. These appeals have been combined with the 9 appeals (05-032-05-040) related to the Amending Approval issued to the Town of High River on October 12, 2005. A mediation meeting was held on November 25, 2005, in High River.

As of March 31, 2006, the appeals are ongoing as another mediation meeting is scheduled for June 20, 2006.

#### **05-020**

**Appellant(s)** – Camp Okotoks Society, **Operator** – Town of Okotoks, **Location** – near Okotoks, **Type of Appeal** – Decision

On August 31, 2005, the Board received a Notice of Appeal from the Camp Okotoks Society with respect to Approval No. 00222483-00-00 issued under the *Water Act* to the Town of Okotoks authorizing the Town to realign the channel and stabilize the banks on the Sheep River, near Okotoks. The Board held a mediation meeting on October 24, 2005, at which time an interim resolution was reached. On November 25, 2005, December 2 and 13, 2005, the Board wrote to the Appellant and requested a status report be provided to the Board as agreed to in the interim agreement. Telephone calls were also placed on December 8, 12, and 13, 2005. On December 15, 2005, the Appellant



advised that it would be withdrawing the appeal and the Board requested written confirmation by December 22, 2005. As no response was received by December 22, 2005, the Board forwarded an e-mail to the Appellant on December 30, 2005, requesting that it provide written notice of its withdrawal. No response was received to this request. On January 10, 2006, the Board advised the participants that the appeal filed on behalf of the Camp Okotoks Society had been dismissed for failing to respond to the Board in a timely manner. On January 18, 2006, the Board issued a Decision dismissing the appeal and closed its file.

Cite as: Camp Okotoks Society v. Director, Southern Region, Regional Services, Alberta Environment re: Town of Okotoks (18 January 2006), Appeal No. 05-020-D (A.E.A.B.).

#### **05-022 and 05-023**

**Appellant(s)** – Ms. Linda Covey and Ms. Elin Barlem, **Operator** – Town of Innisfail, **Location** – Innisfail, **Type of Appeal** – Decision

On September 6, 2005, the Board received Notices of Appeal and a request for a Stay from Ms. Linda Covey and Ms. Elin Barlem with respect to Approval No. 00076694-00-00 issued under the *Water Act* to the Town of Innisfail. The Approval was for the purpose of constructing flood control works at NW 28-35-28-W4M at Dodds Lake in Innisfail. The time period in which an appeal may be filed with the Board with respect to an approval under the *Water Act* is seven days, unless the Board finds there is sufficient reason for extending this filing period. The Board requested the Appellants provide reasons as to why the Board should extend the time limit for filing the appeals. After reviewing the reasons provided, the Board found the Appellants did not present sufficient reasons to demonstrate that special circumstances existed to warrant an extension of the time limit for filing the appeals. The appeals were filed more than five years after the original Approval was issued and the work authorized under this Approval was completed in 2002. As there was no valid appeal before the Board, the Board issued a Decision on January 13, 2006, advising the Stay request could not be considered. The Appellants also requested a reconsideration of the Board's decision regarding appeals previously filed with respect to the amendment of the Approval. The Board also denied the reconsideration request, as the Appellants did not provide any new information that could have resulted in a different decision of the Board, and all of the documents provided by the Appellants were available at the time of the original appeals.

Cite as: Covey and Barlem v. Director, Central Region, Regional Services, Alberta Environment re: Town of Innisfail (13 January 2006), Appeal Nos. 05-022 and 023-D (A.E.A.B.).

#### **05-024**

**Appellant(s)** – Mr. Michael O'Reilly, **Operator** – Mr. Michael O'Reilly, **Location** – near Turner Valley, **Type of Appeal** – Discontinuance of Proceedings

On September 12, 2005, the Board received a Notice of Appeal from Mr. Michael O'Reilly with respect to Alberta Environment's refusal to issue a *Water Act* Licence to him for the diversion of water from the Highwood River Basin in E 36-019-04-W5M (a restricted water basin) near Turner Valley. The Board held a mediation meeting on November 23, 2005, in Calgary and following a productive discussion, an agreement was reached and the Appellant withdrew his appeal. On November 25, 2005, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: O'Reilly v. Director, Southern Region, Regional Services, Alberta Environment (25 November 2005), Appeal No. 05-024-DOP (A.E.A.B.).

#### **05-025, 05-028 and 05-045**

**Appellant(s)** – Ms. Sally Ann Ulfsten, Mr. David and Ms. Inez Stone, Mr. Peter Harwerth, Mr. Ted Ganske, **Operator** – Blackrock Ventures Inc., **Location** – Municipal District of Bonnyville, **Type of Appeal** – Active

On September 19, 2005, the Board received Notices of Appeal from Ms. Sally Ann Ulfsten, Mr. David and Ms. Inez Stone, Mr. Peter Harwerth and Mr. Ted Ganske. The appeals are with respect to the August 19, 2005 decision of Alberta Environment to issue Approval No. 141258-00-00 under the **ENVIRONMENTAL PROTECTION AND ENHANCEMENT ACT** to BlackRock Venures Inc. for the construction, operation, and reclamation of the Orion enhanced recovery in-situ oil sands or heavy oil processing plant and oil production site near Ardmore. The Appellants also filed a request for a Stay of the Approval. On October 11, 2005, the Board denied the Stay request and issued its reasons on November 10, 2005. The Board received submissions on whether the Appellants are directly affected by the Approval, whether the Appellants filed valid Statements of Concern with Alberta Environment, whether the Stone family can reply on the Statement of Concern filed by the previous landowner, and whether the Alberta Energy and Utilities Board had a hearing and if they adequately dealt with all the issues in the Notices of Appeals before this Board. The final submissions were received on January 5, 2006.

As of March 31, 2006, these appeals are ongoing as the Board is in the process of reviewing the submissions.

#### **05-029 and 05-031**

**Appellant(s)** – Ms. Tia Bartlett, Mr. Ken Bartlett, Ms. Alysha Bartlett, Ms. Heather Garon, and Ms. Cheryl Hankelman, **Operator** – BA Energy Inc., **Location** – Strathcona County, **Type of Appeal** – Discontinuance of Proceedings

On September 27, 2005, the Board received Notices of Appeal from Mr. Gary Henderson on behalf of Ms. Tia Bartlett, Mr. Ken Bartlett, Ms. Alysha Bartlett, Ms. Heather Garon, and Ms. Cheryl Hankelman (collectively the Appellants). The Notices of Appeal were with respect to EPEA Approval No. 203303-00-00 issued to BA Energy Inc. for the construction, operation, and reclamation of the Heartland Oil Sands Processing Plant (Bitumen Upgrader) in Strathcona County. On October 24, 2005, the Alberta Energy and Utilities Board (AEUB) wrote the Board to advise that it had considered an application made by BA Energy Inc. to construct and operate the Heartland Upgrader and associated infrastructure in Decision 2005-079. The AEUB also noted that on October 12, 2005, the Alberta Court of Appeal denied an application for leave to appeal Decision 2005-079. The Board requested written submissions from the participants in order to determine whether the issues in the Notices of Appeal had been adequately dealt with by the AEUB. However, on January 10, 2006, the Board received a letter from the Appellants advising they were withdrawing their appeals. As a result, the Board issued a Discontinuance of Proceedings on January 18, 2006, and closed its files.

Cite as: Bartlett et al. v. Director, Northern Region, Regional Services, Alberta Environment re: BA Energy Inc. (18 January 2006), Appeal Nos. 05-029-05-031-DOP (A.E.A.B.).

#### **05-032 and 05-040**

**Appellant(s)** – Mr. Dennis and Ms. Linda Mercer, Mr. Hans and Ms. Katherine Weinacker, Mr. Lyle A. Braunworth, Mr. Don and Ms. Bette Green, Mr. Ron and Ms. Lorraine Gorsche, Mr. Keith Spackman, Mr. Emil Rocher, the Beachwood Homeowners' Association and Mr. Bruce and Ms. Carol Miles, **Operator** – Town of High River, **Location** – near High River, **Type of Appeal** – Active

From October 13 to October 18, 2006, the Board received Notices of Appeal from Mr. Dennis and Ms. Linda Mercer, Mr. Hans and Ms. Katherine Weinacker, Mr. Lyle A. Braunworth, Mr. Don and Ms. Bette Green, Mr. Ron and Ms. Lorraine Gorsche, Mr. Keith Spackman, Mr. Emil Rocher, the Beachwood Homeowners' Association, and Mr. Bruce and Ms. Carol Miles. The nine appeals were with respect to *Water Act* Amending Approval No. 00209177-00-01 which amended *Water Act* Approval No. 00209177-00-00. Approval No. 00209177-00-00 was with respect to the construction of the Golf Course Dyke and the Baker Creek Dyke on the floodplain and/or floodway of the Highwood River, near High River. These appeals have been combined with the eight appeals (05-014, 05-019, 05-021 and 05-041) related to the Approval issued to the Town of High River on August 25, 2005. A mediation meeting was held on November 25, 2005, in High River.

As of March 31, 2006, the appeals are ongoing as a second mediation meeting has been scheduled for June 20, 2006.

#### **05-042**

**Appellant(s)** – Terasen Pipelines (Corridor) Inc., **Operator** – Terasen Pipelines (Corridor) Inc., **Location** – County of Thorhild, **Type of Appeal** – Active

On October 21, 2005, the Board received a Notice of Appeal from Terasen Pipelines (Corridor) Inc. with respect to Alberta Environment's refusal to issue a reclamation certificate to Terasen Pipelines for lands located at NE/SE 10-62-20-W4M near Newbrook. A mediation meeting was held on April 18, 2006, in Alberta.

As of March 31, 2006, the appeal is ongoing as the participants are in discussions, and the Board requested status reports by June 15, 2006.

#### **05-043**

**Appellant(s)** – Mr. Clive Palichuk, **Operator** – TransCanada Pipelines Limited, **Location** – Smoky Lake, **Type of Appeal** – Active

On October 28, 2005, the Board received a Notice of Appeal from Mr. Clive Palichuk with respect to the issuance of Reclamation Certificate No. 00199105-00-00 issued to TransCanada Pipelines Limited (TransCanada) in connection with or incidental to the Smoky River Meter Station in SE 9-59-17 W4M. Participants were requested by the Board to hold January 11, 2006, for a possible mediation meeting, pending a site inspection of Mr. Palichuk's land. The site inspection was to determine if TransCanada was responsible for the site to which the reclamation certificate applied, which later it was determined that TransCanada was responsible. The participants entered discussions and agreed on an interim course of action to defer a mediation meeting until after an assessment of the site. As a result, the Board advised that the mediation meeting would not take place on January 11, 2006.

As of March 31, 2006, the appeal is ongoing with the matter to be held in abeyance until August 2006. The Board has also requested status reports from the participants by August 15, 2006.

#### **05-044 and 05-047**

**Appellant(s)** – Mr. Lee and Ms. Marilyn Fenske and Mr. Markus and Ms. Tracey Janus, **Operator** – Beaver Regional Waste Management Services Commission, **Location** – Ryley, **Type of Appeal** – Active

On November 10 and 15, 2005, the Board received Notices of Appeal from Mr. Lee and Ms. Marilyn Fenske and Mr. Markus and Ms. Tracey Janus, respectively. The Notices of Appeal were with respect to EPEA Amending Approval No. 20754-00-04 issued to the Beaver Regional Waste Management Services Commission. The Approval was for the construction, operation and reclamation of a Class II Landfill near Ryley and the amendment specifically relates to the recirculation and disposal of leachate at the Ryley landfill. A mediation meeting was held on January 17, 2006; however, a resolution was not reached.

As of March 31, 2001, the appeals are ongoing as a hearing is to take place on April 21, 2006.

#### **05-046**

**Appellant(s)** – Mr. Bruce Francis, **Operator** – Petrofund Corp, **Location** – near Taber, **Type of Appeal** – Active

On November 21, 2005, the Board received a Notice of Appeal from Mr. Bruce Francis with respect to Reclamation Certificate No. 219021-00-00 issued to Purcell Energy Ltd.(Purcell) for the Tikal Nycan Turin well located at NE 16-36-10-18-W4M near Taber. On December 2, 2005, the Board was advised that the surface lease was transferred from Purcell to Petrofund Corp as a result of a property transaction in 2004. The Board was also advised that Environmental Associates Inc. may also have an interest in the appeal as they were retained by Purcell to complete the reclamation of the site and continued in that role with Petrofund Corp after the property transfer. The Board requested dates for a mediation meeting; however, the Appellant requested the Board hold the appeal in abeyance until the end of the 2006 growing season so the results of the work carried out by Petrofund Corp could be reviewed.

As of March 31, 2006, the appeal is ongoing. The Board granted the Appellant's request for an abeyance and advised the participants to submit status reports by September 1, 2006.

#### **05-048**

**Appellant(s)** – West Fraser LVL, Sundre Forest Products Inc., a subsidiary of West Fraser Mills Ltd., **Operator** – Fraser LVL, Sundre Forest Products Inc., a subsidiary of West Fraser Mills Ltd., **Location** – near Rocky Mountain House in Clearwater County, **Type of Appeal** – Report and Recommendations

On November 29, 2005, the Board received a Notice of Appeal from West Fraser LVL, Sundre Forest Products Inc., a subsidiary of West Fraser Mills Ltd. (the Appellant) with respect to EPEA Approval No. 1424-01-00 issued to the Appellant authorizing the construction, operation, and reclamation of the Stachan wood processing plant near Rocky Mountain House in Clearwater County. The Board held a mediation meeting on February 7, 2006, in Edmonton, following which an agreement was reached by the participants. The Board issued a Report and Recommendations to the Minister of Environment on May 2, 2006, recommending the Minister accept the agreement. On May 8, 2006, the Minister approved the agreement.

Cite as: West Fraser LVL v. Director, Central Region, Regional Services, Alberta Environment (2 May 2006), Appeal No. 05-048-R (A.E.A.B.).

#### **05-049**

**Appellant(s)** – Lakeland County, **Operator** – Parkland Developments Limited, **Location** – Lakeland County, **Type of Appeal** – Discontinuance of Proceedings

On December 9, 2005, the Board received a Notice of Appeal and a request for a Stay from Lakeland County with respect to *Water Act* Amending Approval No. 00139297-00-01, issued to Parkland Developments Limited. The Amending Approval revised the construction completion date under condition 12 of original *Water Act* Approval No. 00139237-00-00. The original Approval authorized the construction of storm water management works and a fish spawning pond in Lakeland County. In consultation with the participants, the Board scheduled a mediation meeting for March 14, 2006 in Lac La Biche. However, on February 24, 2006, the Board received a letter from the Director requesting the Board adjourn the mediation *sine die* and dismiss the appeal, and as a result, a written submission process began. On March 21, 2006, the Board received a letter from the Appellant withdrawing its appeal. On March 22, 2006, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Lakeland County v. Director, Northern Region, Regional Services, Alberta Environment re: Parkland Developments Limited (22 March 2006), Appeal No. 05-049-DOP (A.E.A.B.).

#### **05-050 and 05-052**

**Appellant(s)** – Stonebridge Farms Ltd., **Operator** – Stonebridge Farms Ltd., **Location** – near Galahad, **Type of Appeal** – Discontinuance of Proceedings

On December 12, 2005, the Board received a Notice of Appeal from Stonebridge Farms Ltd. with respect to Approval No. 00183682-00-00 issued under the *Water Act* on January 21, 2005, Amending Approval 00183682-00-01 issued on June 30, 2005, and Amending Approval No. 00183682-00-02 issued on November 1, 2005, to Stonebridge Farms Ltd. The Approval authorizes the construction and maintenance of a berm in an unnamed water body and maintenance of the existing drainage ditch in NW 34-40-14-W4M, near Galahad while the Amending Approvals amend the completion dates of the berm. The Board requested dates to conduct a mediation meeting, and on January 6, 2006, was notified by Alberta Environment that Mr. Leonard and Ms. Jean Keichinger should be included in this mediation as they submitted a Statement of Concern during the application review process that led to the issuance of the original Approval. The Board held a mediation meeting on February 8, 2006, in Stettler in which all participants, including the Keichingers attended. At the conclusion of the mediation, the Appellant agreed to advise the Board whether it would withdraw the appeals. On February 15, 2006, the Board received a letter from the Appellant withdrawing the appeals. Therefore, the Board issued a Discontinuance of Proceedings on February 24, 2006, and closed its file. Cite as: Stonebridge Farms Ltd. v. Director, Central Region, Regional Services, Alberta Environment (24 February 2006), Appeal Nos. 05-050-052-DOP (A.E.A.B.).

#### **05-053, 05-054 and 05-070**

**Appellant(s)** – Ms. Donna Breaker, the Siksika First Nation, and Mr. Darrell Breaker, **Operator** – Town of Strathmore, **Location** – Town of Strathmore, **Type of Appeal** – Active

From December 22 to January 17, 2006, the Board received three Notices of Appeal from Ms. Donna Breaker, the Siksika First Nation, and Mr. Darrell Breaker with respect to Amending EPEA Approval No. 1190-01-13 issued to the Town of Strathmore for the construction, operation, and reclamation of a wastewater system for the Town of Strathmore. The Appellants requested a Stay of the Amending Approval and their written submissions were received February 23, 2006. On March 16, 2006, the Board denied the Stay with reasons to follow.



As of March 31, 2006, the appeals are ongoing as the Board is in the process of providing reasons for denying the Stay and proceeding with the appeal process.

**05-055**

**Appellant(s)** – Mr. Allen and Ms. Marie Mucha, **Operator** – Devon Canada Corporation, **Location** – County of Thorhild, **Type of Appeal** – Active

On January 10, 2006, the Environmental Appeals Board received a Notice of Appeal from Mr. Allen and Ms. Marie Mucha with respect to the issuance of EPEA Reclamation Certificate No. 1900544-00-00 issued to Devon Canada Corporation for the Northstar Radway 9-36-59-20 well in the County of Thorhild. On January 30, 2006, Alberta Environment requested that the appeal be dismissed for being filed late. The Board set a schedule to receive submissions on this motion. On February 21, 2006, Alberta Environment withdrew their motion in order for the Board to pursue mediation.

As of March 31, 2006, the appeal is ongoing as the Board has scheduled a mediation meeting for July 25, 2006.

**05-056**

**Appellant(s)** – Mr. George Kerekanich, **Operator** – Penn West Petroleum Ltd., **Location** – near High Prairie, **Type of Appeal** – Discontinuance of Proceedings

On January 16, 2006, the Board received a Notice of Appeal from Mr. George Kerekanich with respect to EPEA Reclamation Certificate No. 00222660-00-00 issued to Penn West Petroleum Ltd. for the Petromet et al. Shadow 13-35-74-18 well and Barrow Pit near High Prairie. The Board held a mediation meeting on May 17, 2006, in High Prairie. As a result of productive discussions, the participants reached a resolution and the Appellant withdrew his appeal. The Board issued a Discontinuance of Proceedings on June 1, 2006, and closed its file.

Cite as: Kerekanich v. Director, Northern Region, Regional Services, Alberta Environment re: Penn West Petroleum Ltd. (01 June 2006), Appeal No. 05-056-DOP (A.E.A.B.).

**05-057, 05-064, 05-067 and 05-069**

**Appellant(s)** – Future of Blackfoot and Area Environmental Association, Ms. Lori and Mr. Gerry Fradette, Mr. Dwight Janzer, Mr. John and Ms. Judy Gerich, Mr. Doug and Ms. Anna Kuchenbrand, Ms. Gail Moore, and Mr. Don and Ms. Laura Gilmour, **Operator** – DJ Hog Farms, **Location** – near Blackfoot, **Type of Appeal** – Active

From January 25 to February 10, 2006, the Board received Notices of Appeal from the Future of Blackfoot and Area Environmental Association, Ms. Lori and Mr. Gerry Fradette, Mr. Dwight Janzer, Mr. John and Ms. Judy Gerich, Mr. Doug and Ms. Anna Kuchenbrand, Ms. Gail Moore, and Mr. Don and Ms. Laura Gilmour. The Notices of Appeal were with respect to Licence No. 00207448-00-00 issued under the *Water Act* to DJ Hog Farms Ltd. authorizing the operation of a works and the diversion of up to 9,137 cubic metres of water annually from water wells at NE 12-050-02-W4M, near Blackfoot for agricultural purposes (confined feeding operation).

As of March 31, 2006, the appeals are ongoing as the Board has scheduled a mediation meeting for May 17, 2006.



#### **05-065 and 05-066**

**Appellant(s)** – Mr. Don Faltermeier and Ms. Amanda Lee Faltermeier, **Operator** – DJ Hog Farms, **Location** – near Blackfoot, **Type of Appeal** – Discontinuance of Proceedings

On January 25, 2006, the Board received Notices of Appeal from Don and Amanda Faltermeier with respect to Licence No. 00207448-00-00 issued under the *Water Act* to DJ Hog Farms Ltd. authorizing the operation of a works and the diversion of up to 9,137 cubic meters of water annually water wells at NE 12-050-02-W4M, near Blackfoot, Alberta, for agricultural purposes (confined feeding operation). On April 20, 2006, the Board advised that it had scheduled a mediation meeting for May 17, 2006 in Lloydminster. On May 1, 2006, the Board received a telephone call from the Appellants withdrawing their appeals. As a result, the Board issued a Discontinuance of Proceedings on May 16, 2006, and closed its file.

Cite as: Faltermeier et al. v. Director, Northern Region, Regional Services, Alberta Environment re: DJ Hog Farms Ltd. (16 May 2006), Appeal Nos. 05-065 & 066-DOP (A.E.A.B.).

#### **05-071**

**Appellant(s)** – Mr. Wayne Sommerstad, **Operator** – Mr. Wayne Sommerstad, **Location** – M. D. of Foothills, **Type of Appeal** – Active

On February 1, 2006, the Board received a Notice of Appeal from Mr. Wayne Sommerstad, with respect to Alberta Environment's issuance of an Enforcement Order to Mr. Wayne Sommerstad. The Enforcement Order was issued for an alleged contravention of section 36(1) of the **WATER ACT** on his lands legally described as NW-01-20-02-W5M in the Municipal District of Foothills for the construction of a dam, the diversion of water, and the release of water through a downstream culvert causing flooding of neighboring lands. The Appellant also requested a Stay of the Enforcement Order. The Board reviewed the submissions, and on March 3, 2006, the Board notified the participant that the Stay request was denied. Full reasons for denying the Stay will be issued in due course. A mediation meeting was held on March 17, 2006, in Okotoks, and discussions are ongoing.

As of March 31, 2006, the appeal is ongoing. The Board requested the participants to provide status reports by July 4, 2006.

#### **05-072**

**Appellant(s)** – Rock Ranches Ltd., **Operator** – Rock Ranches Ltd., **Location** – near Sundre, **Type of Appeal** – Discontinuance of Proceedings

On February 3, 2006, the Board received a Notice of Appeal from Rock Ranches Ltd. with respect to Licence No. 00220551-00-00 issued under the *Water Act* to Rock Ranches Ltd. The Licence authorized the operation of works and the diversion of up to 1,136.4 cubic meters of water annually from the source of water for the purpose of watering livestock, near Sundre. As the Board began to process the appeal it received an e-mail from the Appellant (on February 10, 2006) withdrawing the appeal. Therefore, on February 14, 2006, the Board issued a Discontinuance of Proceedings and closed its file. Cite as: Rock Ranches Ltd. v. Director, Southern Region, Regional Services, Alberta Environment (14 February 2006), Appeal No. 05-072-DOP.

**05-073**

**Appellant(s)** – Ms. Mary Frebrowski, **Operator** – Burlington Resources Canada Ltd., **Location** – County of Lamont, **Type of Appeal** – Discontinuance of Proceedings

On February 23, 2006, the Board received a Notice of Appeal from Ms. Mary Frebrowski (the Appellant and landowner), with respect to EPEA Reclamation Certificate No. 00216335-00-00 issued to Burlington Resources Canada Ltd. (BRCL) for the BRCL Inland well located at NE-12-52-17-W4M in the County of Lamont. As the Board began to process the appeal, it received a telephone call from the Appellant withdrawing the appeal. The Board advised the Appellant to notify the Board, in writing, if the information was correct. The Board did not receive any communication to the contrary, and therefore, confirmed the appeal was withdrawn and the Board would be closing its file. Therefore, on March 22, 2006, the Board issued a Discontinuance of Proceedings and closed its file.

Cite as: Frebrowski v. Inspector, Northern Region, Regional Services, Alberta Environment re: Burlington Resources Canada Ltd. (22 March 2006), Appeal No. 05-073-DOP (A.E.A.B.).

**PARTIES TO THE APPEALS**

***Water Act Approvals***

**30 appeals related to 11 *Water Act* Approval Holders**

05-001	Sanjo and Benchmark Developments Inc./ <i>Water Act</i> Approval No. 00197206-00-00 (Darren and Toni Daniel)
05-003	Sanjo and Benchmark Developments Inc./ <i>Water Act</i> Approval No. 00197206-00-00 (Ron and Judy Plett)
05-010	Hal Willis/ <i>Water Act</i> Amending Approval No. 00193447-00-02 (Elin Barlem)
05-011	Hal Willis/ <i>Water Act</i> Amending Approval No. 00193447-00-02 (Linda June Covey)
05-012	Hal Willis/ <i>Water Act</i> Amending Approval No. 00193447-00-02 (Ray Cerniuk)
05-014	Town of High River/ <i>Water Act</i> Approval No. 00209177-00-00 (Dennis and Linda Mercer)
05-015	Town of High River/ <i>Water Act</i> Approval No. 00209177-00-00 (Hans and Katherine Weinacker)
05-016	Town of High River/ <i>Water Act</i> Approval No. 00209177-00-00 (Lyle A. Braunworth)
05-017	Town of High River/ <i>Water Act</i> Approval No. 00209177-00-00 (Donald and Bette Green)
05-018	Town of High River/ <i>Water Act</i> Approval No. 00209177-00-00 (Ron Gorsche and Lorraine Gorsche)
05-019	Town of High River/ <i>Water Act</i> Approval No. 00209177-00-00 (Keith Spackman)
05-020	Town of Okotoks/ <i>Water Act</i> Approval No. 00222483-00-00 (Camp Okotoks Society)
05-021	Town of High River/ <i>Water Act</i> Approval No. 00209177-00-00 (Wayne Adams on behalf of Helen Adams)
05-022	Town of Innisfail/ <i>Water Act</i> Approval No. 00076694-00-00 (Linda Covey)
05-023	Town of Innisfail/ <i>Water Act</i> Approval No. 00076694-00-00 (Elin Barlem)
05-024	Michael O'Reilly/Application for Licence and Approval under the <i>Water Act</i> for legal land location, W 36-19-4-W4M
05-032	Town of High River/ <i>Water Act</i> Amending Approval No. 00209177-00-01 (Dennis and Linda Mercer)

- 05-033 Town of High River/*Water Act* Amending Approval No. 00209177-00-01 (Hans and Katherine Weinacker)
- 05-034 Town of High River/*Water Act* Amending Approval No. 00209177-00-01 (Lyle A. Braunworth)
- 05-035 Town of High River/*Water Act* Amending Approval No. 00209177-00-01 (Don & Bette Green)
- 05-036 Town of High River/*Water Act* Amending Approval No. 00209177-00-01 (Ron and Lorraine Gorsche)
- 05-037 Town of High River/*Water Act* Amending Approval No. 00209177-00-01 (Keith Spackman)
- 05-038 Town of High River/*Water Act* Amending Approval No. 00209177-00-01 (Emile Rocher)
- 05-039 Town of High River/*Water Act* Amending Approval No. 00209177-00-01 (Beachwood Homeowners Association)
- 05-040 Town of High River/*Water Act* Amending Approval No. 00209177-00-01 (Bruce and Carol Miles)
- 05-041 Town of High River/*Water Act* Approval No. 00209177-00-00 (Bruce and Carol Miles)
- 05-049 Parkland Developments Limited/*Water Act* Amending Approval No. 00139297-00-01 (Lakeland County)
- 05-050 Stonebridge Farms Ltd./*Water Act* Approval No. 00183682-00-00
- 05-051 Stonebridge Farms Ltd./*Water Act* Approval No. 00183682-00-01
- 05-052 Stonebridge Farms Ltd./*Water Act* Approval No. 00183682-00-02

### ***EPEA Approvals***

#### **14 appeals related to 5 EPEA Approval Holders**

- 05-025 BlackRock Ventures Inc./EPEA Approval No. 141258-00-00 (Sally Ulfsten)
- 05-026 BlackRock Ventures Inc./EPEA Approval No. 141258-00-00 (Inez Stone and David Stone)
- 05-027 BlackRock Ventures Inc./EPEA Approval No. 141258-00-00 (Peter Harwerth)
- 05-028 BlackRock Ventures Inc./EPEA Approval No. 141258-00-00 (Ted Ganske)
- 05-029 BA Energy Inc./EPEA Approval No. 203303-00-00 (Tia, Ken and Alysha Bartlett)
- 05-030 BA Energy Inc./EPEA Approval No. 203303-00-00 (Heather Garon)
- 05-031 BA Energy Inc./EPEA Approval No. 203303-00-00 (Cheryl Henkelman)

- 05-044** Beaver Regional Waste Management Services Commission/EPEA Amending Approval No. 20754-00-04 (Marilynn and Lee Fenske)
- 05-045** BlackRock Ventures Inc./EPEA Approval No. 141258-00-00 (John Roux)
- 05-047** Beaver Regional Waste Management Services Commission/EPEA Amending Approval No. 20754-00-04 (Markus and Ms. Tracey Janus)
- 05-048** West Fraser LVL, Sundre Forest Products Inc., a subsidiary of West Fraser Mills Ltd. /EPEA Approval No. 00001424-01-00 for the Strachan Wood Processing Plant
- 05-053** Town of Strathmore/EPEA Amending Approval No. 1190-01-13 (Donna Breaker)
- 05-054** Town of Strathmore/EPEA Amending Approval No. 1190-01-13 (Siksika Nation)
- 05-070** Town of Strathmore/EPEA Amending Approval No. 1190-01-13 (Darrell Breaker)

#### ***Water Act Licences***

##### **14 appeals related to 2 *Water Act* Licence Holders**

- 05-057** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Future of Blackfoot and Area Environmental Association)
- 05-058** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Lori Fradette)
- 05-059** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Gerry Fradette)
- 05-060** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Dwight and Lynn Janzer)
- 05-061** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (John Gerich)
- 05-062** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Judy Gerich)
- 05-063** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Doug Kuchenbrand)
- 05-064** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Anna Kuchenbrand)
- 05-065** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Don Faltermeier)
- 05-066** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Amanda Lee Faltermeier)
- 05-067** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Gail Moore)
- 05-068** JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Don Gilmour)



- 05-069 JD Hog Farms Ltd./*Water Act* Licence No. 00207448-00-00 (Laura Jacques-Gilmour)
- 05-072 Phyllis Rock, Rock Ranches Ltd./*Water Act* Licence No. 00220551-00-00

### ***Reclamation Certificates***

#### **10 appeals related to 10 Reclamation Certificates**

- 05-002 Deer Creek Energy Limited/Northern EnviroSearch Ltd./Application for a Reclamation Certificate for the Medcon Joffre Lloyd 8A-14-51-W4M well
- 05-005 Husky Oil Operations Limited/Application for a Reclamation Certificate for the Husky Blackfoot Lloyd 14A-25-49-2 W4 well
- 05-008 PrimeWest Energy Inc./EPEA Reclamation Certificate No. 00205740 (Rodney Sargent)
- 05-013 Husky Oil Operations Limited/Application for Reclamation Certificate/Renaissance 16C Suffield 16-14-20-8 well, surface point in LSD 1-23-20-8-W4M
- 05-042 Terasen Pipelines (Corridor) Inc. (now Kinder Morgan Canada Inc.)/Application for Reclamation Certificate for lands located at NE/SE-10-62-20-W4M
- 05-043 TransCanada Pipelines Limited/EPEA Reclamation Certificate No. 00199105-00-00 (Clive Palichuk)
- 05-046 Petrofund Corp/EPEA Reclamation Certificate No. 219021-00-00 (Bruce Francis) (Note that Petrofund Corp purchased site from Purcell Energy)
- 05-055 Devon Canada Corporation/EPEA Reclamation Certificate No. 190544-00-00 (Allen and Marie Mucha)
- 05-056 Penn West Petroleum Ltd./EPEA Reclamation Certificate No. 222660-00-00 (George Kerekanich)
- 05-073 Burlington Resources Canada Ltd./EPEA Reclamation Certificate No. 00216335-00-00 (Mary Febrowski)

### ***Water Act Enforcement Actions***

#### **3 appeals related to 3 Water Act Enforcement Actions**

- 05-007 Mesken Contracting Limited/*Water Act* Administrative Penalty No. WA-0501-AP-SR-05-01
- 05-009 Wolfgang Artin Dittrich/*Water Act* Enforcement Order No. WA-EO-200503-NR
- 05-071 Wayne Sommerstad/*Water Act* Enforcement Order issued January 24, 2006

***EPEA Enforcement Actions***

**1 appeal related to 1 EPEA Enforcement Action**

**05-006** Walter Construction Corporation/EPEA Environmental Protection Order EPO  
2005/11-SR

***Other***

**05-004** Devon Canada Corporation/AEUB Approval No. 9426 for the Devon's Jackfish  
SAGD project, original AEUB application No. 1321211 (Buffalo River Dene  
Nation and Metis Nation Clearwater Clear Lake Region)

**PRESENTATIONS**

June 10, 2005 William Tilleman (Chair)	Canadian Bar Association, Administrative Law Section National Conference of the CBA Administrative Law Section "Issues from a Tribunal Perspective" Calgary
June 20, 2005 William Tilleman (Chair)	Council of Canadian Administrative Tribunals Administrative Justice in the Modern Canadian Mosaic Conference "Tribunal Independence" Ottawa
August 17, 2005 Gilbert Van Nes (General Counsel)	Japanese Exchange Students from the U of A Board Office, Edmonton
September 12, 2005 Steve Hrudehy (Chair)	17 <sup>th</sup> Annual Environmental Lawyers in Government Conference Leading the Way: Innovations in Environmental Law Strategies for Sustainability – Water Edmonton
September 13, 2005 Gilbert Van Nes (General Counsel)	17 <sup>th</sup> Annual Environmental Lawyers in Government Conference Leading the Way: Innovations in Environmental Law Edmonton
September 17, 2005 Gilbert Van Nes (General Counsel)	Alternatives to Dispute Resolution: An Introduction (Participate on alumni panel to provide comments and answer questions on ADR) Alberta Arbitration and Mediation Society Edmonton
September 19, 2005 Steve Hrudehy (Chair)	Mr. Jonty Somers, Chief Legal Counsel, Department of Conservation for the Government of New Zealand Issues and Processes Under Alberta Legislation Board Office, Edmonton
September 20, 2005 Gilbert Van Nes (General Counsel)	Japanese Exchange Students from the U of A Board Office, Edmonton
October 11, 2005 Gilbert Van Nes (General Counsel)	Canadian Bar Association, Administrative Law Section "Practice and Procedure before the EAB" Calgary

October 20, 2005 Gilbert Van Nes (General Counsel)	Canadian Institute 5 <sup>th</sup> Annual Advanced Administrative Law & Practice "Constitutional and Aboriginal Issues as they Relate to Tribunal Issues and the manner in which it is being addressed by Alberta and British Columbia OR the Expanding Role of ADR and Administrative Tribunals" Ottawa
November 10, 2005 Steve Hrudehy (Chair)	Canadian Bar Association Environmental Law Section "Meeting the new Chair of the Environmental Appeals Board" Edmonton
November 15, 2005 Gilbert Van Nes (General Counsel)	Insight Information Water and Land Use for the Oil and Gas Industry Conference "Public consultation and the EAB, use of water for oilfield injection, and contaminated land" Calgary
December 1, 2005 Gilbert Van Nes (General Counsel)	Alternatives to Dispute Resolution: An Introduction (Participate on an alumni panel to provide comments and answer questions on ADR) Alberta Arbitration and Mediation Society Edmonton
December 16, 2005 Steve Hrudehy (Chair)	University of Calgary (International Institute for Resource Industries & Sustainability Students, School of Business) "The Environmental Appeals Board" Calgary
January 14, 2006 Lisa Awid Goltz (Projects Officer)	Alternatives to Dispute Resolution: An Introduction (Participate on an alumni panel to provide comments and answer questions on ADR) Alberta Arbitration and Mediation Society Edmonton
January 31 and February 1, 2006 Lisa Awid Goltz (Projects Officer)	Alberta Municipal Affairs: Negotiating Effectively (Participate as a coach to mentor students in training session). Training conducted by Gordon Sloan and Jamie Chicanot of ADR Education Edmonton
February 10, 2006 Lisa Awid Goltz (Projects Officer)	Alternatives to Dispute Resolution: An Introduction (Participate on alumni panel to provide comments and answer questions on ADR). Alberta Arbitration and Mediation Society Edmonton
February 24, 2006 Lisa Awid Goltz (Projects Officer)	ADR Development Course: Finding Agreement: Constructive Collaboration for Communities Workshop 2005-2006 (Participate as a coach to mentor students in training session). Municipal Affairs Edmonton

March 1 and 2, 2006 Lisa Awid Goltz (Projects Officer)	Alberta Sustainable Resource Management Course: Resolving Resource Management Conflict (Participate as a coach to mentor students in training session). Training conducted by Gordon Sloan and Jamie Chianot of ADR Education Hinton
March 7, 2006 Gilbert Van Nes (General Counsel)	University of Alberta ADR Class, Faculty of Law "Negotiated Rule Making" Edmonton
March 8, 2006 Denise Black (Board Secretary) & Marian Fluker (Associate Counsel)	University of Alberta, Faculty of Law Public Interest Career Day Edmonton
March 15, 2006 Lisa Awid Goltz (Projects Officer)	County of Strathcona, Facilitation Assisted as a co-facilitator in working with representatives from Strathcona County Sherwood Park
March 22 & 23, 2006 Lisa Awid Goltz (Projects Officer)	Alberta Justice, Civil Law Advanced Level In-House ADR Skill Development Training Participate as a Coach Edmonton
March 24, 2006 Steve Hrudey (Chair)	Canadian Bar Association, Southern Environmental Law Section "The Alberta Environmental Appeals Board" Calgary



## **MEDIATION INFORMATION**

Mediation is a form of alternate dispute resolution that allows the participants to find a resolution of an appeal without going through the Board's formal process. The key elements of mediation are that it is entered into freely by all participants and is designed to assist participants in reaching a mutually agreeable solution. For this reason, it is important that all participants who attend mediation do so in good faith and understand that since they will have a hand in shaping their own resolution, the end result will be more meaningful in addressing their own needs.

### **Mediation - Why Use It?**

- cost effective;
- timeliness;
- private/confidential;
- saves face;
- participants are more likely to follow-through with an agreement they have crafted;
- promotes win-win solutions;
- control over outcome lies with the participants;
- maintains existing relationships and sometimes forms new relationships;
- promotes creativity in generating options; and
- promotes positive communication and understanding.

### **When is Mediation not Appropriate?**

The Board strongly values the principles of mediation and tries to use it as much as possible to resolve its appeals; however, there are times when mediation may not be appropriate. The Board may not recommend mediation for the following situations: the matter is of an important legal principle that should be decided by a panel in a formal proceeding; the issue is of significant public interest and there is a need to have a hearing where the public has an opportunity to participate; or the person is unwilling to participate.

### **Types of Cases the Board Mediates**

Cases that come before the Board that are dealt with through mediation usually involve:

- environmental approvals;
- land reclamation;
- contaminated sites;
- water licences; and
- water approvals.

### **Determining Issues, Positions, and Interests in Mediation**

In order to effectively facilitate the resolution of conflict, the mediator will assist the participants in differentiating between issues, positions and interests.

**Issues**

Issues are the topics or subject matter the participants would like to reach resolution on. It is the subject that the participants have a difference of opinion on and the items on the agenda that need to be discussed.

***Examples of issues are:***

- Water Licence
- Reclamation Certificate
- Environmental Approvals

**Positions**

Positions are one-sided statements proposing a fixed solution to one participant's needs, wants, and desires.

***Examples of position statements are:***

- "I want..."
- "I need..."
- "This is the only way..."
- "We have to..."
- "I will not..."

**Interests**

The principle behind mutual gains interest-based mediation is to try to move participants from their positions to their underlying interests. Shifting participants from positions to interests is important, because it helps them understand and evaluate what is most important to them. Many participants may not realize until they are in mediation what their true interests or concerns are. Positions are easy for individuals to come up with because they often seem to be the most "logical" or "reasonable" approach to settling the dispute in their eyes. To many participants, a position is the concrete expression of a more refined interest. An appellant may demonstrate his position by stating "I need the well to stop pumping because it is affecting my water levels;" however, his underlying interests may be "I am worried about my family not being able to have enough water or having enough water to provide for my livestock." Participants who remain entrenched in their positions are limited when it comes to generating solutions. Mediators will assist the participants in bringing out their underlying needs as this allows everyone present to gain a better understanding of the situation and help the participants come up with solutions that will address their real concerns in a meaningful way.

***Examples of interests are:***

- Accountability
- Appreciation
- Recognition
- Acknowledgement
- Understanding
- Trust
- Security
- Fulfillment
- Sense of belonging
- Safety
- Validation